

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

[LB41 LB54 LB95 LB100 LB230 LB239 LB297 LB315 LB329 LB333 LB386 LB387  
LB389A LB473 LB524 LB544 LB546 LR101 LR103 LR104 LR118 LR119 LR120 LR121  
LR122 LR123]

SENATOR GLOOR PRESIDING

SENATOR GLOOR: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the forty-sixth day of the One Hundred Second Legislature, First Session. Our chaplain for today is Pastor Vern Olson with the Cedar Valley Parish that serves Cedar Rapids and Belgrade, Nebraska, and he is a guest of Senator Dubas. Please rise.

PASTOR OLSON: (Prayer offered.)

SENATOR GLOOR: Thank you, Pastor Olson. I call to order the forty-sixth day of the One Hundred Second Legislature, First Session. Senators, please record your presence. Roll call. Mr. Clerk, please record.

CLERK: I have a quorum present, Mr. President.

SENATOR GLOOR: Thank you, Mr. Clerk. Are there any corrections for the Journal?

CLERK: I have no corrections.

SENATOR GLOOR: And are there any messages, reports, or announcements?

CLERK: Your Committee on Government, chaired by Senator Avery, reports LB239 to General File with committee amendments attached. Senator Bloomfield offered LR118. That will be laid over. A communication from the Governor. (Read re LB333.) And Senator Krist would like to print an amendment to LB546, Mr. President. That's all that I

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

have. (Legislative Journal pages 865-867.) [LB239 LR118 LB333 LB546]

SENATOR GLOOR: Thank you, Mr. Clerk. We'll now proceed to the first item on the agenda. Mr. Clerk.

CLERK: Mr. President, LB544 is a bill by Senator Pahls. (Read title.) Introduced on January 19 of this year, at that time referred to the Education Committee. The bill was advanced to General File. I have no amendments, Mr. President. [LB544]

SENATOR GLOOR: Senator Pahls, you're recognized to open on LB544. [LB544]

SENATOR PAHLS: Good morning, Mr. President and members of the body. The genesis of this bill actually started in the year 2007. It started from this body. That's when we decided as a body to take a look at civics in the state of Nebraska. And the task of this bill at that time was to develop a committee to take a look at civics, and that committee was called the Civics Nebraska Partnership Advisory Committee. And over the past several years that is what has been done. We've taken a look at the civics, what is or what has been happening in that particular area, and to probably nobody's dismay, we did find that we did have certain needs. And this is what this committee is supposed to do, is come up with some of the recommendations. But before I go into some further notes of their recommendations, what I would like to do is sort of introduce to you the people on this committee because they're a very interesting and diverse group of people. We had Doris Huffman from the State Bar Foundation; we had Janet Bancroft from Nebraska Supreme Court; we had Tim Bayne, from the Lincoln East High School, who is an outstanding social studies teacher; Larry Starr from the Department of Education in the area of social studies; Walt Zink, who is an attorney in Lincoln, but he has a very, very extensive military background; we had Dennis McIntyre, who is a retired educator from the Westside School District, who specialized in technology; Mary Miller from Randolph Public Schools; Joe Watkins from the Grand Island Senior High; we had various people from the Secretary of State's Office; and, of course, myself and

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

Stacy Anderson who works for me in my office. And just to give you an idea of some of the groups who not only supported what we did but supporting this bill is the State Board of Education, because that is who this group...this committee, that's who we report to, the Department of Education. And, of course, which probably would be no one's surprise, we had a number of people, our groups and civil organizations such as the State Bar, the Academic Freedom Coalition, the United Nations Association-Nebraska, Common Cause of Nebraska, and Nebraska League of Women Voters. Those groups did support or are supporting what we are trying to get accomplished. What I'm going to do is just to give you a flavor of some of the...just tidbits of some of the conversations or some of the writings from some of these individuals. From the Nebraska Supreme Court, this is what...just a tidbit of what an individual says: This will give our educators a focal point for teaching civics. From the Academic Freedom Coalition: This would encourage students themselves to take on their civil rights and duties in their schools and communities. Common Cause: Our organization recognizes the importance of students having opportunities to learn and value the practice of civil discourse between opposing interests. And here I thought was a very interesting statement from the League of Women Voters: Democracy is not a spectator sport; young people must practice democracy in order to understand and strengthen it. And, of course, there are a number of other comments I could be speaking to, but I wanted to bring those up just to show you that there are people who are out there who are interested in this topic. Now before we get much further along in the dialogue, probably ought to say...define what the definition of civics. Now I think throughout this body if I would say, right now, you're going to take a test and you're going to have to sort of write on a sheet of paper your definition of civics, we probably would get a common theme through all of it, but there would be a little bit of difference. And if you read all the literature out there, you can find a number of definitions, but this is the definition that's the Civics Nebraska Committee, this is how they define it, and I think it actually is a pretty powerful statement. Now if you just read it word by word, it's, oh, a nice long sentence, but I think if we dissect it a little bit we would understand where they're coming from. Civics is applied social studies and represents the study and

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

application of being an engaged participant in a free and self-governing society. The key word in here is "applied." So many times we don't apply what we learn, and that's what we're saying. Students, they need to apply what they learn and they need to study and make an application--but becoming a participant. So many times it's easy to read material and to let it go there. Now let's say, in the state of Nebraska, what actually is required now...and in the bill, you can see we are amending just a very small segment of it. But just to give you an idea, in the state of Nebraska, when we talk about civics, I'll just...on item (3): All grades below grade six shall devote at least one hour per week in this area. And in items, lines 4 and 5, says that two grades in middle school and two grades in high school with at least three periods per week, which averages about two semesters in a school year in the secondary level. And you may say: what's the driving force behind this? It's because we're starting to take a look at the standards in social studies. They have been looked at within the last ten years, sometime maybe in '98, the last time in 2003. The standards will set the direction where civics will go in the state of Nebraska in the future. Right now, we have math, reading, and science. We are really taking a hard look at that, and to some degree they have sort of overtaken the idea behind civics. As we know, in most areas when you assess something, that's where the power or the money will flow to. Although we do know we need math, reading, and science, there's no question there, but to make a well-rounded individual we do need to take a look at civics. We're trying to get past the paper/pencil type of assessing. So what we are looking at is action-oriented assessments. That's what we're all about. That's what we are trying to drive...this committee is trying to drive. For those of you, all of you can probably...or the majority of you have been involved in some Scouts at some level in your previous career. Think of some of the projects that you did when you were a Scout. It was not just paper/pencil. You had to have action and then you had to verify that by writing something, and that's what we're thinking of. Or for those of you in FHA or those of you in 4-H, you know that to obtain some of those levels or some recognition, there are certain things you had to do. It was action oriented. What I'm going to do now is just point out one or two programs that are currently involved. In fact, I know we have one senator, if not more, who have been involved in this particular

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

body. And I'll say, Senator Howard, I know you've been involved in Project Citizen. That is a type of program where the participants, they research public policy and they develop a portfolio of their work and then they present in a public hearing before a panel of people such as senators or their staff, and I know you're one of those. And I thought I'd just do another one simply because we have a number of attorneys in here. Attorneys, we have...you have some of those also, your Center for Law-Related Education. You have the Nebraska High School Mock Trial project; you have Law Day essay contests and you have Law Day job shadowing. And I know sometimes some attorneys actually go to the classroom and talk about their livelihood. [LB544]

SENATOR GLOOR: One minute. [LB544]

SENATOR PAHLS: Thank you. And I think occasionally we can see the Secretary of State walking or going around the state of Nebraska in his frontier garb. Well, to wrap this up, what we are trying to do is to make social studies action oriented. That is the type of assessment that we're looking for. And we're looking for involvement at the community level and we're looking at making students...or having students have the capabilities of having discourse, learning how to interact with other people. So we're trying to help develop those skills. We're trying to have them think about fact over opinion, to take a look at cause and effect, ideas of propaganda. You can just see what we are up against if you look at what's happening out right now. So this bill actually is a very simple addition to a particular section in the area of education, and we think that we perhaps can be the driving force of making, as you go across the state of Nebraska, you can see civics in every city, in every town. [LB544]

SENATOR GLOOR: Time, Senator. [LB544]

SENATOR PAHLS: Thank you. [LB544]

SENATOR GLOOR: Thank you, Senator Pahls. (Visitor introduced.) Members, you

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

have heard the opening on LB544. Senator Adams, you are recognized. [LB544]

SENATOR ADAMS: Thank you, Mr. President. Members, there are no amendments to this, but, as Committee Chair and maybe as a former social studies teacher, I did want to make a quick comment. Your first reaction might be: well, we're putting more on school districts. I don't think so. I don't think so. Look at the existing statute crafted in the 1940s, and go back and ask your school districts how many of them feel burdened by that statute. I know what the answer is going to be. So then you might ask the question: well, then what are we even doing this for? Well, personally, if you really take a look at the existing statute, I think the language that Senator Pahls is asking to put in it is the only language that, frankly, makes a whole lot of sense. And if school districts did decide more to focus on civil discourse and involvement and participation, and take all the other stuff away, we would probably have a better civics class and probably have created better citizens. I think what he's adding makes sense. Is it a burden, an additional burden to teachers or to school districts? I don't believe so. Thank you, Mr. President. [LB544]

SENATOR GLOOR: Thank you, Senator Adams. Senator Price, you are recognized. [LB544]

SENATOR PRICE: Thank you, Mr. President. Good morning, members, colleagues. The other day Senator Pahls came up to me and said: Senator Price, will you get up and talk on this subject matter? And, of course, you know, given an invitation, I did want to take advantage of it. And I wondered, when we talked about...when he asked me about civics, why was he saying something to me about civics and everything? And he said because of my prior military service. I was very happy to have him say that and point that out. But when we look at civics and we look at what we have in a society, and why do we have civics and why do we study it, everybody likes to talk about our rights. But the other part we have to take into consideration on that equation is our duties. We have rights and duties. And it's a duty to participate in the civic activity to give it form

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

and give it function, to give it direction. And so, for 20 years, I participated. But I would ask and say that when teachers are out there, teaching civics, and we're looking at things and we want to look at the success of our civics right now, how many of us, all of us who are here, we're elected so we tend to be a little more engaged perhaps than others. Some would call us high energy participants. But go to a school board meeting when times are good and the money flowing freely, and how many people do we see participating? Look at your voter rolls on your next election cycle and look at the number of people between the ages of 18 and 21 who are participating in a primary election. I had thought oftentimes if we could somehow or another harness those individuals who are just turning 18 to 20, in some districts if they knew the power they had because of the turnout during a primary, they could run this state. Someone told me politics was run by those who show up. And now we get back to this civics lesson--and that lesson being, there's along with the rights, there are duties, and that this great representative democracy did not happen and does not continue to happen without the participation of its citizenry. And so, therefore, I'd really strongly support what we're doing here and I do appreciate Senator Pahls asking me to be one person who would get up and speak on this, because it forced me to look and reevaluate why we're doing what we do and how do we bring more people along to continue what our forefathers started. Thank you, Mr. President. [LB544]

SENATOR GLOOR: Thank you, Senator Price. The Chair recognizes Senator Nelson. [LB544]

SENATOR NELSON: Thank you, Mr. President and members of the body. I certainly rise in support of LB544 and thank Senator Pahls for bringing this. As Senator Pahls was introducing, I was reading through the existing statute, and it's very interesting reading. Senator Adams spoke about whether this was a burden for it. I'm not quite sure whether all of the requirements here in this particular statute might impose a burden on the schools, and I...but I would hope, regardless of that, that they're following through with all the things that are required here. Specifically, it's interesting to read that in all

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

grades below the sixth grade there will be a recital of stories having to do with American history, the singing of patriotic songs, and the insistence that every pupil memorize "The Star-Spangled Banner" and "America." I wonder if that's being done. It's been a long time since I was in school. Maybe someone who's more closely connected with teaching can let me know whether this is really being done and whether our young people are learning those numbers and the development of reverence for the flag. As a lawyer, I have participated in going into schools in the past and talking about the legal profession and law, and I know our Bar Foundation here in Nebraska, as Senator Pahls has said, is very active in promoting contests that will interest people in matters of citizenship and also civic discourse. I do have a question for Senator Pahls. I'm always interested in what things mean and I wonder if he would answer a question or two. [LB544]

SENATOR GLOOR: Senator Pahls, will you yield? [LB544]

SENATOR PAHLS: Yes. [LB544]

SENATOR NELSON: In your amendment--thank you, Senator Pahls--I'm wondering when it says, "The duties of citizenship, including active participation in the improvement of a citizen's community, state, country, and world and the value and practice of civil discourse," what are we talking about there--active participation? Is this encouraging the students to do that or are we expecting our schools to take them out and get them involved in some way in active participation? What are we...what is our meaning here or direction? [LB544]

SENATOR PAHLS: Thank you, and that is a good question. We're actually doing both. We want a student to do some of this on their own but we are also encouraging schools to promote this. And many schools are. And just let me show you, there is a difference...and I'm just going to say let's talk about a food drive. Lots of schools do food drives. But we're trying to maybe up it a notch if they so choose. Of course, this is not a mandatory thing, but it's actually to find out why they are doing the food drive. Is it



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

because maybe government agencies are not doing their duty? That could be one of the reasons why certain people need food drives. It's to get behind, to analyze. That is probably a step up than just doing a food drive. And, of course, we are encouraging students to do that and also school districts to make that part of their mission. [LB544]

SENATOR NELSON: So I would suppose there would be mock elections and things of that sort? I recall that we had a county day where I think, you know, when we were in high school. We went out and participated in...we shadowed the county officers. And, in fact, there was a mock trial and things of that sort. Is this another example of what they could be doing? [LB544]

SENATOR PAHLS: Yes. And I would say: Right on. That's...because if you read the...if you would read the definition of civic... [LB544]

SENATOR GLOOR: One minute, Senators. [LB544]

SENATOR PAHLS: ...civic definition, you would see it's actually doing it, not just talking about it. And what you have described to me is what I say "doing it." [LB544]

SENATOR NELSON: All right. Thank you, Senator Pahls. I certainly support this amendment and would encourage the body to vote in support of LB544. Thank you, Mr. President. [LB544]

SENATOR GLOOR: Thank you, Senator Nelson. Senator Howard, you are recognized. [LB544]

SENATOR HOWARD: Thank you, Mr. President and members of the body. Senator Pahls mentioned the Project Citizen group. Thank you very much for bringing that up this morning. And I'll just give you...for those of you that don't know what this is, it's a wonderful competition among the students and schools. They decide on, usually it's a

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

legislative bill that one of us has, and they present it. They present the positives and why they are supporting this. I remember one of them that came, that was mine, was regarding not smoking in cars when there are children present. And they were really invested in this. They not only do a presentation down here at the Legislature in the Warner Chamber, where the top three schools in Nebraska compete, but they also do a board, a display. And the display is available at the National Conference of State Legislatures for the individual or whoever the individual school that wins this competition. But it's...they are so invested in this and these students are so committed to these issues and to learning about this. It's really an amazing thing to see. The problem for me as a judge is I want to give everybody top marks (laugh), and so it becomes very, very difficult. But I so appreciate this and it's right along the lines of what Senator Pahls is promoting here for us. Our students need to have the opportunity to have pride in their government, in their state, in the process, and to feel like they're a part of it. And thank you, Senator Pahls, for bringing us this bill. [LB544]

SENATOR GLOOR: Thank you, Senator Howard. The Chair recognizes Senator Wallman. [LB544]

SENATOR WALLMAN: Thank you, Mr. President. Thank you, members of the body. I had civics class in high school, and not always the best grades, because we challenged the teachers. We had excellent debate on various issues. But I never was more proud of our youth than when we had a tornado at our school. Side by side, students from Pius, from Waverly, from Freeman, from Lincoln, from Crete, working side by side, cleaning up the debris from a tornado. That's Civics 101. And these students, I encourage...I still give talks to schools today, emphasizing the importance of citizenship. We have too much negative publicity nowadays about our country, about our military. It's been ever since the Vietnam War. So we have to pick it up as adults. We have wonderful children in this nation, and they will take care of us when we get old if we take care of them when they're young. Thank you, Mr. President. [LB544]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

SENATOR GLOOR: Thank you, Senator Wallman. Senator Carlson, you are recognized. [LB544]

SENATOR CARLSON: Mr. President and members of the Legislature, I too stand in support of LB544 as brought by Senator Pahls. And I bring up another point that is a parallel situation to what he's attempting to do in civics class in our school system. I think we need a focus in our educational system for all students in terms of where our food comes from. What would happen in Nebraska if our food source is threatened? When outside groups come in to change the way we produce, grow, and deliver food, what are the effects? Is this effort by outside groups that tend to come in, and want to come in and change the way we do things, good for Nebraskans? How do we prevent outside groups from interfering with our way of life? And this is an effort, I believe, that could be done in our K-12 system without additional cost. It simply requires a reevaluation of what is taught and when is it included in the curriculum. It's much the same as what Senator Pahls is trying to do with LB544, and I thank him for bringing forth an opportunity that I could get up and speak on something related to it, but I do support his efforts in LB544. Thank you, Mr. President. [LB544]

SENATOR GLOOR: Thank you, Senator Carlson. There are no additional senators wishing to be heard. Senator Pahls, you are recognized to close on the advancement of LB544. [LB544]

SENATOR PAHLS: Thank you, Mr. President, members of the body. I thank those of you who had the opportunity to get up and speak, for your positive comments about this. And that's what we're trying to do, is I think this morning we're trying to bring everybody, to their attention, the direction that we hope the state of Nebraska will go, as well as the nation. And I think there's not one of us in this body would argue, if we would probably have had a government teacher such as Senator Adams, we possibly would have even taken a different look on government. And I've had the opportunity to meet a number of those while serving on this committee. We have an awful lot of good people

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

out there and hopefully we can push the state in the direction where it's action oriented in the area of civics, and that's the intent. And again, Senator Howard, I know you've been involved in Project Citizen, but what I found very interesting, yesterday somebody from NACO told me, he says: Rich, do you know what we do at the county level? They have programs out there that I was not aware of. So if nothing else, maybe this will stimulate others to letting us know that there are some things out there that could be incorporated into the curriculum of the schools without additional expense or time on their part. Again, my hope is, in the near future, across the state of Nebraska, we could just feel a rumbling because of all the good things that students...not only us as adults, but that students are starting to see the need for positive change. And they can have a tremendous effect on us. Thank you. [LB544]

SENATOR GLOOR: Thank you, Senator Pahls. Members, the question is the advancement of LB544 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB544]

CLERK: 40 ayes, 0 nays, Mr. President, on the advancement of LB544. [LB544]

SENATOR GLOOR: The bill advances. (Visitor introduced.) Mr. Clerk, announcements. [LB544]

CLERK: Mr. President, two new resolutions: LR119 by Senator Brasch, LR120 by Senator Adams. Both of those will be laid over. That's all that I have, Mr. President. (Legislative Journal page 867-868.) [LR119 LR120]

SENATOR GLOOR: Continuing with General File. Mr. Clerk. []

CLERK: Mr. President, LB100. It is a bill by Senator Coash. (Read title.) The bill was introduced on January 6 of this year, at that time referred to the Judiciary Committee. The bill was advanced to General File. I do have Judiciary Committee amendments, Mr.

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

President. (AM165, Legislative Journal page 772.) [LB100]

SENATOR GLOOR: Senator Coash, you're recognized to open on LB100. [LB100]

SENATOR COASH: Thank you, Mr. President. Good morning, colleagues. LB100 is a bill that eliminates voluntary intoxication of a defendant as a defense. LB100 is a policy that I believe is expected by our constituents. If you make a conscious choice to drink or get high, you should be held responsible for your behavior. History has shown that jurors nor the public accept the idea that someone should be legally excused for criminal acts due to claiming temporary mental illness after voluntarily ingesting drugs or alcohol. It is time to remove this possibility of defense, for good. Colleagues, this is a policy decision. It is a decision that we have in front of us to hold criminals accountable for their crimes. There are two parts to this bill. First, the bill would eliminate the not responsible by reason of insanity defense in situations where the defendant was voluntarily intoxicated or high when he or she committed their crime. In order to hold criminals accountable for their actions, we need to remove the possibility of this defense. Under this bill, unless the defendant first proves by clear and convincing evidence that the intoxication was not voluntary, it cannot be used as a defense to negate the not guilty by reason of insanity defense. This bill also addresses a current trend where criminals are attempting to use their voluntary intoxication to negate their criminal culpability. What this means is that they are saying that they are too drunk or too high to form such things such as premeditation or intent when they committed their crime. We have seen this used in murder cases in Omaha, Chadron, South Sioux City, and other locations across the state, with some success. Should we enact LB100, Nebraska will become the thirty-fifth state to enact similar legislation. We would join states in our neighboring region, including Colorado, Montana, North Dakota, Oklahoma, Wyoming, and South Dakota. Common law tells us that intoxication caused by voluntary drug and alcohol abuse is not a mental illness. Even if it were a mental illness, it could be cured simply by stopping the use of the intoxicating substance. Whenever someone is found not guilty by reason of insanity, they are to remain in

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

custody until such time that their mental illness is cured. As a result, someone that is in treatment for mental illness caused by drug or alcohol intoxication may be immediately released once they are no longer intoxicated. This defense is not to be confused with that of someone who acquires a mental illness caused by a prolonged pattern of consistent drug and/or alcohol abuse, nor is it to be confused with someone who has become impaired of involuntary ingestion of drugs or alcohol. Both exceptions are currently recognized and do not seek to be changed by an action of this bill. This bill seeks to eliminate the defense of temporary mental illness brought on by voluntary intoxication of drugs and alcohol, and claims made that the perpetrator was incapable of differentiating between right and wrong and appreciating the nature of their conduct, and was incapable of understanding the differences between the rightfulness and wrongfulness of their actions to such a degree that he or she should not be held responsible. It will also hold people responsible for their actions after they have made the conscious choice to become intoxicated. They will no longer be able to use intoxication as a shield from their accountability in our court system. Colleagues, this bill was brought by Senator McGill a couple years ago, and at that time it was not advanced because the thought was maybe this doesn't happen as often as we think and maybe this is a solution in search of a problem. Since that time, colleagues, we've had a handful of other cases where the defendant has tried to use this as a defense. And I'm going to illustrate a few of them. The first one is a case that will be familiar to many of my Lincoln colleagues. It's the case of Shane Tilley. Many remember that story of a young man, Andy Lubben, who was stabbed to death by his friend in February of '06. This event is something that his family will never forget. The friend, Shane Tilley, stabbed Andy more than 20 times while under the influence of 32 tablets of Coricidin cough medicine. He was charged with first-degree murder, but he was found not guilty by reason of insanity. Because of that, he is currently in a hospital facility instead of a correctional facility. And just last summer, while on a walk with unarmed staff members, he went on a run and he did a good enough job to hide from law enforcement for almost a day. Fortunately, he didn't injure anyone else while he was out--but he could have. I want to talk to you about a man named Melecio Camacho. In May of '09, he was

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

charged with raping and killing a 3-year-old South Sioux City girl. At trial, he and his defense attorneys alleged that he voluntarily snorted about \$50 worth of cocaine, smoked some marijuana, and drank several beers just prior to raping and killing the toddler. As a result of this allegation, the defense argued that he was not responsible by reason of insanity, as he did not know the difference between right and wrong nor could he comprehend the nature and quality of his acts. Fortunately, the jury disagreed with that argument and he was found guilty of first-degree murder. But colleagues, I will point out that he was found not guilty of the burglary that he committed because he didn't have the requisite intent. Joseph Hotz: In December of '08, Chadron State College student, Joseph Hotz, stabbed and killed his roommate while under the influence of mushrooms. Afterwards, he continued to cause terror as he walked through the streets of Chadron wielding a knife. At his trial, he claimed he was mentally ill at the time of his crimes due to voluntary ingesting the mushrooms just before his spree. Again, the jury rejected the claim and he was convicted of second-degree murder and numerous other offenses. In both of these cases, the defense was allowed, despite the prevailing law on the subject from virtually every other state in the country and the pronouncements that such temporary voluntary intoxication is not a mental illness. As a result, the state expended necessary resources and wasted time countering these arguments at a trial. These are examples where voluntary intoxication was used to advance an insanity defense. And finally, I want to tell you about Kyle Bormann. In 2008, he was convicted of gunning down a college student who was waiting for food in a Kentucky Fried Chicken drive-in. At his trial for first-degree murder, he successfully argued that he was too drunk to form the necessary premeditation element necessary for him to be convicted of a first-degree murder. As a result, he was convicted of second-degree murder. This bill will prevent the likes of Kyle Bormann from making similar arguments in the future. Colleagues, when this defense is offered, it costs money on both sides. It costs money to defend; it costs money to prosecute. And we're not talking about a couple hundred dollars here. We're talking about several thousand dollars. When this bill was brought a few years ago, we thought this kind of defense wouldn't be a problem. Colleagues, I've given you examples where this is a problem. It is being used and it is a

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

matter of policy for this body to decide if we will continue to allow this type of a defense in the future. I urge my colleagues to support LB100 and become the thirty-fifth state to say that we will also hold defendants accountable for the actions that they commit regardless of whether or not they are under the influence. Thank you, Mr. President.  
[LB100]

SENATOR GLOOR: Thank you, Senator Coash. As the Clerk stated, there are amendments from the Judiciary Committee. Senator Ashford, as Chairman of that committee, you're recognized to open on the committee amendments. [LB100]

SENATOR ASHFORD: Thank you, members. Senator Coash has explained his bill adequately. I want to make sure that everyone does understand, however, that in order to meet the constitutional requirements, that this type of legislation be drawn narrowly to make certain that we are not excluding the defense of insanity in an appropriate case. So the committee amendments, in order to, what we believe to be making the proper...giving proper deference to the constitutionality of these particular statutes, that we amend the bill on page 3 to ensure that we're talking about temporary conditions and not conditions as Senator Coash suggested that are brought upon by years of chronic alcoholism or being under the influence of drugs. So on line 19, we add the word "temporary" before condition, to make clear that we are talking about a temporary condition, some of which Senator Coash...examples of which Senator Coash has described in his opening. Also on line 22, we exclude, starting with the word "any," the sentence starting with the word "any," deleting that sentence as well to make clear again that we are not precluding the use of the insanity defense by someone who has had a history of chronic alcoholism or drug use. I believe with the addition of...or the deletion of that sentence and the addition of the word "temporary" in subsection (4), that we meet the constitutional issues raised by cases that have addressed these statutes in other states. And Senator Coash is correct: there are 34 other states that have passed same or similar legislation, legislative bill. And the Eighth Circuit has, on two occasions we can find, has affirmed similar laws in Missouri, in one case, and I can't recall the



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

other case, but there have been two Eighth Circuit cases. So I feel that we're on firm constitutional grounds with Senator Coash's bill, provided that we make the changes in AM165. Thank you. [LB100]

SENATOR GLOOR: Thank you, Senator Ashford. We now move to floor debate. Senator McGill, you are recognized. [LB100]

SENATOR MCGILL: Thank you, Mr. President and members of the body. I rise in support of LB100 and the Judiciary amendments. The Lubben family lives in my district and I brought a very similar bill a couple years ago, trying to do what exactly what Senator Coash is here today. He did a great job explaining the piece of the legislation. And what happened to the Lubben family and Andy Lubben shouldn't happen to anyone. I mean he was hanging out with his friend when his friend turned on him and stabbed him over 20 times. Shane Tilley had taken eight times the recommended amount of cough medicine, which people who are familiar with the younger crowd know that cough medicine is an over-the-counter way to get high when you don't have access to other drugs. He went insane due to this and is serving time in the regional center--not serving time, but is committed to the regional center in a manner that if doctors there found him sane again, then he could be out free with no jail time for what he did just a couple of years ago. I feel that an injustice was done in this particular case and I hope that LB100 will prevent future families from going through the things that...the situation that the Lubben family has had to go through. Please vote to advance this bill. Thank you, Mr. President. [LB100]

SENATOR GLOOR: Thank you, Senator McGill. Senator Council, you are recognized. [LB100]

SENATOR COUNCIL: Thank you, Mr. President. And to my colleague, Senator Coash, I appreciate and understand his intent and objective, and I am sure that my colleague will acknowledge the fact that I sought to work with him to address the issue presented

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

in a manner that I felt would be fair and constitutional. And my concern about LB100, even with the amendment, is that we're enacting bad law based upon a bad circumstance. And the circumstance is what occurred in the Tilley case. And while there's no question that Mr. Tilley committed the heinous crime while under the influence of a substance that he ingested voluntarily, to say that we need this bill and to take away the rights available to other individuals I think is problematic. For example, if you listen to the cases that my colleague cited, I think Mr. Tilley is the exception. The case in South Sioux City with the child, the jury rejected the insanity defense in that case, and that's what juries are entitled to do. I reminded my colleague that in a case involving a young woman in Omaha, the defense counsel for that defendant raised the temporary...well, unable to form the intent to commit first-degree murder, and the jury accepted that argument. And that young man, although he left his house fully armed with a high-powered rifle with sight and shot an innocent young woman and took her life, that jury found that he could not have formed the necessary intent because he was under the influence of alcohol. So if we want to correct, you know, every time the juries make improper decisions, in our opinion, we'll be going back and trying to rewrite the entire Criminal Code of the state of Nebraska. I have a concern that the point...the argument that's being advanced is these individuals committed heinous crimes and they're not being punished. Well, there's criminal punishment and there's what the law provides for in situations where someone has been found guilty by reason of insanity. There was an option presented that could have been considered, that was rejected, which would create an offense...create an offense for those who voluntarily ingest a controlled substance and then commit a crime, and it would be a stated offense where you wouldn't have to give these jury instructions with regard to whether or not the individual had formed the necessary intent. So...and my colleague, you know, he considered it and rejected it. I think that's the better way to address this situation is to provide for in our Criminal Code a level of offense for those who commit particular intent crimes while under the influence of a controlled substance, whether they ingested it voluntarily or involuntarily. And that's the better direction I believe for this state to go in. And for that reason I did not vote on the measure coming out of committee, and I did

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

that out of respect for my colleague, Senator Coash... [LB100]

SENATOR GLOOR: One minute. [LB100]

SENATOR COUNCIL: ...who worked diligently on this piece of legislation, sat on a number of occasions with defense counsel and myself trying to work out a compromise, for lack of a better descriptor. I just...and I understand that the Eighth Circuit has upheld these types of statutes in other states, but I'm troubled by the fact that we are going to make new law based upon a bad decision. And it was a bad decision that Shane Tilley was found not guilty by reason of insanity, but when you compare it to other cases where people were found, that defense was rejected. That's what our jury system is in place for. And for those reasons I cannot support LB100, even with the amendment that addressed one of the concerns that I shared with Senator Coash. Thank you. [LB100]

SENATOR GLOOR: Thank you, Senator Council. The Chair recognizes Senator Burke Harr. [LB100]

SENATOR HARR: Thank you, Mr. President. I'm here to speak on behalf of LB100 with the amendments on AM165. As a former Douglas County deputy county attorney, I had firsthand experience with situations such as this, including...well, I wasn't involved in this, but probably the most famous is Kyle Bormann who was an individual who chose to go out and get intoxicated, who then went and looked for a black person to kill. And the reason he chose that was because he was upset over a football game. Now we cannot, as a society, reward that type of behavior. It is ridiculous and ludicrous that we allow a defense in that situation. And so for those reasons I would support this bill and this amendment, and I would go ahead and yield the rest of my time to Senator Coash. Thank you. [LB100]

SENATOR GLOOR: Four minutes 10 seconds, Senator Coash. [LB100]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

SENATOR COASH: Thank you, Mr. President. Thank you, Senator Harr. I want to take a moment to address a couple things my colleague Senator Council said, and I do appreciate her comments. These...as we deliberated this bill, we did look at alternatives. And at the end of those alternatives I decided that the best course of action was LB100 as amended by AM165. I too was concerned about constitutional issues. What I will tell you, colleagues, is not only the Eighth Circuit has upheld this, but in two cases the U.S. Supreme Court has held up this decision, both from a Missouri case and a Montana case. That's important. We have to make sure that bills we put through this can pass that kind of muster. Is this an exception as we discussed the Tilley case? I believe not. Were there mistakes made on both sides of that? Possibly. But that's what we do here, colleagues. We put boundaries around the judicial system, around sentencing, around process, so that mistakes aren't made. And I believe what LB100 does is it puts the appropriate boundaries around the process. I believe that LB100 balances the rights of the defendant but also serves the cause of justice. We have to keep both of those things in mind. And as I worked through this bill, those were the two things that I wanted to make sure were always present: due process rights and the cause of justice. I believe both are addressed in LB100. I appreciate the discussion and I appreciate the body's vote on both the amendment and the underlying bill. Thank you, Mr. President. [LB100]

SENATOR GLOOR: Thank you, Senator Coash. (Visitors introduced.) Seeing no further senators wishing to be recognized, Senator Ashford, you are recognized to close on the committee amendments. [LB100]

SENATOR ASHFORD: Thank you, Mr. President. I don't have much more to add other than to say that I think the committee was...and I appreciate Senator Council's discussion about policy. It's a valid...certainly a valid point. My belief is that, with these amendments, that we have complied with the decisions, and that the U.S. Supreme Court has given as well as the Eighth Circuit on these matters. And I would urge the adoption of AM165. Thank you. [LB100]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

SENATOR GLOOR: Thank you, Senator Ashford. Members, the question is, shall the committee amendments to LB100 be adopted? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB100]

CLERK: 37 ayes, 2 nays, Mr. President, on adoption of committee amendments. [LB100]

SENATOR GLOOR: The amendment is adopted. Discussion continues on the advancement of LB100 to E&R Initial. There are no senators wishing to be recognized. Senator Coash, you're recognized to close on the advancement of LB100. [LB100]

SENATOR COASH: Thank you, Mr. President. Thank you, colleagues, for adopting the amendment. That was important to make sure that this bill moves forward in a way that will be upheld by our constitution and future court decisions. Colleagues, LB100 is an important bill because it sets a policy for our state that says when you commit a crime in our state you're accountable for that crime. You're accountable to the citizens; you're accountable to your victims. And while it's important that due process be followed, what LB100 does is it says there are certain times when you can say you were too drunk or high to know what you were doing, but there are certain times that you can't say that. And when you can't say that, it's because the state of Nebraska believes that despite your state, you're responsible. Our constituents expect us to enact laws that hold defendants accountable for their actions. And by voting LB100 to advance to Select File, you're sending that message and you are saying to Nebraskans: we get it; we're going to hold people accountable and we're going to give them the rights that they're afforded but...and at the end of the day, when people use drugs or alcohol, they're responsible for using drugs or alcohol, and when they're under the influence, they're responsible for their behavior. That's the right policy for our state. And for those reasons I would ask the body to advance LB100. Thank you, Mr. President. [LB100]

SENATOR GLOOR: Thank you, Senator Coash. The question is the advancement of

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

LB100 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB100]

CLERK: 40 ayes, 2 nays, Mr. President, on the advancement of LB100. [LB100]

SENATOR GLOOR: The bill advances. Mr. Clerk. [LB100]

CLERK: Mr. President, on LB230. It was a bill originally introduced by Senator Sullivan. (Read title.) The bill was introduced on January 10 of this year, referred to the Government, Military and Veterans Affairs Committee. The bill was advanced to General File. I do have committee amendments, Mr. President. (AM365, Legislative Journal page 617.) [LB230]

SENATOR GLOOR: Thank you, Mr. Clerk. Senator Sullivan, you are recognized to open on LB230. [LB230]

SENATOR SULLIVAN: Thank you, Mr. President, and good morning, colleagues. LB230 addresses the important issue of protection of information relating to public utilities, but before I get into the specifics of the bill, I think that this discussion requires some background in context. As Nebraskans and Americans, our lives were forever changed by the horrific events of 9/11. As a result, we must be ever watchful and alert against those who would use our own openness and trust to commit terrorist acts. Federal authorities are increasingly concerned about potential threats to America's wide array of critical infrastructure and key resources that are potential targets for terrorism, such as the electric grid and drinking water infrastructure--resources that, quite frankly, provide the essential services to our society. Nationwide, the majority of these facilities are owned and operated by both private sector and state and local governments. Those owned by the private sector are not required to disclose information. But here in Nebraska, a public power state, our public utilities are among the many entities in Nebraska subject to the requirements of the public records act, and as such, the public

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

may access the majority of their documents and records under the act. As technology has advanced, more and more public records requests are made via the Internet and can appear as if they are from legitimate sources, yet they come from anywhere and from anyone in the world. In recent years, there's been a dramatic increase in attacks, particularly in the form of cyber attacks targeted against critical infrastructure. Unfortunately, threats to our states' and our nation's utility infrastructure, whether physical or cyber-related, are real. Just two weeks ago the FBI thwarted a planned terrorist attack in Texas. The individual arrested was targeting electric power plants. This is just one example of threats our country deals with on a daily basis. In Nebraska, the majority of critical infrastructure facilities are publicly owned and operated. Let me repeat that statement: In Nebraska, the majority of critical infrastructure facilities are publicly owned and operated. This infrastructure is so vital that its incapacitation, exploitation, and destruction through terrorist attack could have a debilitating effect on the security and economic well-being of our state and our country. To ensure safe and reliable operation of Nebraska's public utility system, certain specific public utility infrastructure design details need to be withheld from public disclosure in order to protect the facilities. So under LB230, as amended, our state's public electric, gas, and water utilities would be allowed to withhold specific information pertaining to public utility infrastructure, specifications, and design drawings. Nebraska's public utilities use a transparent process overall. Public board meetings are required to be noticed. The public may attend any board meetings and all projects are discussed at public meetings. The public will continue to have access to information regarding a public utility's plans to build new facilities, such as power plants, electrical substations, transmission lines, drinking water facilities, or office buildings, through a series of public hearings on all proposed new construction. LB230 was placed on General File with the committee amendment on February 22. The vote to advance from committee was 8-0. The committee amendment is the result of a compromise that's been worked out between the state's public utilities and Media of Nebraska, who, by the way, was on the only opponent at the public hearing. With the committee amendment, LB230 now says that public utility infrastructure specifications or design drawings, the public disclosure of

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

which would create a substantial likelihood of endangering public safety or property, may be withheld from the public unless otherwise provided by state or federal law. The amendment also addresses customer use information. Emerging technology such as smart meters will produce extensive data about customer electricity usage. With the amendment, LB230 protects personally identified private customer use information. This is a privacy right and the customer should determine if that information may be accessed or disclosed. Nebraska's public utilities provide Nebraskans with low rates, exceptional reliability, and open governance. LB230 as amended by the committee is a simple and reasonable clarification of Nebraska's Public Records Act. It is intended to protect our publicly owned and operated utilities and Nebraska's citizens while not infringing on the public's right to transparent government. These times, unfortunately, right or wrong, they are "a-changing," and we must keep up and be vigilant. LB230 allows us to protect ourselves and our interests, so I encourage the body to support and advance LB230 to Select File. Thank you very much. [LB230]

SENATOR GLOOR: Thank you, Senator Sullivan. As the Clerk stated, there are amendments from the Government, Military and Veterans Affairs Committee. Senator Avery, as Chair of the committee, you're recognized to open on the amendments. [LB230]

SENATOR AVERY: Thank you, Mr. President. Senator Sullivan described the amendment fairly well, but let me hit some of the high points anyway. After the public hearing on this bill, it became apparent that we were going to need to bring the different parties together for some additional discussions to see if we could reach a compromise. As Senator Sullivan mentioned, Media of Nebraska was the only opponent. And I have to say that Media of Nebraska has an impeccable record of protecting public records and the public records law in this state, and the committee usually pays very careful attention when Media of Nebraska shows up to support or oppose any of our public records bills. We brought the public utilities together with Media of Nebraska, and the point of this was to strike a balance between the need for security of our public utilities



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

and the highly desirable goal of maintaining public access to public records, and the committee amendment reflects the outcome of those discussions. As Senator Sullivan indicated, this amendment provides greater specificity as to when public documents may be withheld from the public. To reiterate: first, the public utility infrastructure specifications or design drawings, the disclosure of which would create a substantial likelihood of endangering public safety or property, may be withheld from the public unless otherwise provided by state or federal law. Now this is already language...there is already some language in this section of law that allows certain unique assessments or response plans to be withheld from the public that are intended to prevent or mitigate criminal acts, the disclosure of which would create a substantial likelihood of endangering public safety or property. The committee amendment language provides a slightly more narrow specification of what is an open record. Also a public utility may withhold personally identified private citizen customer use information. In the green copy of the bill all customer use information may have been withheld that would have included not only private citizens but public buildings and businesses. Personally identified private citizen account payment information may already be withheld from the public. The committee amendment uses that existing language to add primary citizen customer use information. The committee advanced the bill as amended on an 8-0 vote. I urge you to adopt AM365 and let us move LB230 forward. Thank you. [LB230]

SENATOR GLOOR: Thank you, Senator Avery. We now move to floor debate. Senator Fulton, you are recognized. [LB230]

SENATOR FULTON: Thank you, Mr. President. I thank Senator Carlson for informing me that I had been recognized. Members, I support the amendment. I support the bill. This was a bill that I actually introduced in my first year down here at the Capitol, and we never were able to strike that accord between the need to protect the public safety with the legitimate need or our media to report on that which we the people own and have interest in, that is our public infrastructure. And so I am pleased to see that Senator Sullivan has taken the ball and run, and she is on the verge of scoring a

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

touchdown it looks like. This is, colleagues, one of our responsibilities. When I brought this forward however many years ago, the first time I brought it forward, I started by saying that we each swore oaths, and part of our responsibility is the maintaining of the public safety. And we live in a day and age where people half a world away seek to do us harm for no other reason than we do not ascribe and believe the same things they believe. We've seen it happen in the tragedies of 9/11 and we've seen it happen in different parts of our country, and there continue to be threats to our public safety. We in Nebraska have a Unicameral Legislature, and that means that there are only 49 of us who have a legislative responsibility to ensure the public safety. This bill is a big deal. I don't know if you're watching what is going on at this point in time in the world. In Japan, presently, there is the potential for a nuclear meltdown...a meltdown of a nuclear plant. Very serious. Hundreds of thousands of lives are threatened. We have two such facilities here in Nebraska. We have a public infrastructure that carries electricity across our state. These aren't...they are not guarded. There aren't people sitting at outposts guarding our electrical distribution lines. They're open. And it would be pretty easy for someone to request the drawings and the schematics and the layouts of a lot of these critical and I'll even...well, I'll just say critical areas of our public infrastructure. My own background in engineering, I can tell you, just from an HVAC...from a schematic of the heating, ventilation, and air conditioning, where a node is that can extract the most harm for a building--and it's not that difficult. There are such people out there who want to do us harm. This is a very important bill. I'm glad that we're able to move it forward, and hopefully--hopefully--it causes other Nebraskans to remain vigilant, because we need to be vigilant in these times. I pray that we don't have to look back on this day, 10 years or 15 years down the road, having thwarted an attempt. I pray that's not the case, but at least we will have made that possible by passing this bill. So thank you, Senator Sullivan. And I thank Senator Schumacher for prioritizing this bill and Senator Avery and his committee for working collaboratively for giving us a way forward. This is an important bill. Thank you, Mr. President. [LB230]

SENATOR GLOOR: Thank you, Senator Fulton. Senator Loudon, you are recognized.

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

[LB230]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. I support this bill and this is something that, as Senator Fulton has pointed some of it out, is very important. What we're trying to do here is set it up so that some of the public record isn't available for how some of the construction and the engineering has developed for different areas of our electrical grid system, primarily. Also it does include gas and water and some of the other public systems, but your electrical system is the one that's important. If you had the right drawings of one of these substations and you could probably, or someone that would wish to, could probably neutralize that station with one rifle bullet if they knew which box to hit in that substation. If any of you have ever been around some of those when they do the testing to shut those substations on and off and change the electric grids around, why, it's kind of harrowing when you see that electricity jump about two or three feet from the switch when they get ready to pull the switch. But nonetheless, this is something that is very important and we need to protect those substations and all areas that we have in the state. There are many of those around. In fact, you look around the city of Lincoln, you'll drive around a lot of them. And those...that's where your power comes in and then it's divided up into the areas. It isn't just worrying about where the generation plants are but also the grid system. A few of you can remember a few years back when we had an ice storm and it took one of the power lines down, the transmission lines that came from the west where Lincoln gets its power from the one generation plant at Laramie River Station. When that went out then the city of Lincoln had to look around to buy their power from some other source because they own an interest in that Laramie River, and it wasn't available at that time because the grid system was down. And this is what we're talking about is so that those drawings and engineering developments aren't public record. So I think this is a very good bill and I certainly rise to support it. Thank you, Mr. President. [LB230]

SENATOR GLOOR: Thank you, Senator Louden. Senator Price, you are recognized.  
[LB230]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

SENATOR PRICE: Thank you, Mr. President and members of the body. I rise in support of the bill and the amendment. One of the things we need to understand about this public infrastructure question we have here, in Australia, not too many years ago...and let me back up. One of the issues here we said about foreigners or somebody outside of our country trying to cause harm, we all know that. But there's a case in Australia where a disgruntled employee with a laptop sat outside of a sewage and water treatment facility; went into the system, negotiated through there; went to a valve, opened a valve up and released 20,000 gallons of raw sewage into clean water. So again what we have to be very careful for when we talk about these things, these attacks that we're talking about can come from any one of a number of areas. And the last thing we want, as we heard in testimony in the committee, we actually have companies outside of our country, outside of our borders, who are making requests to the power companies for diagrams of the infrastructure. I will tell you that's a bad deal. And I would also tell you, one time...I was stationed overseas, as many people know, at Ramstein Air Base. Somebody parked a car over a particular parking lot spot and detonated an explosive device, and two people were killed on the base. But the intention was not just what they did in wrecking that base, that parking lot. The intention was they parked a car, luckily one spot too far over the direct lines, the heating lines, steam-generation lines that went through the base. And had they parked the car in the right place, that explosive activity would have disrupted the steam flow and could have led to the explosion in the dormitories, right before a shift change, for all of our airmen serving at Ramstein Air Force Base. We were very fortunate to have avoided a larger tragedy because they weren't parked exactly where they needed to be. But ladies and gentlemen, they had the designs; they knew where to park. They were very close--a very large hole in that parking lot--but they just missed it and we were fortunate. And what we can't do is have someone have access to the materials with no prior consent and no understanding of what they're going to do with that material beforehand. Therefore, having been through it, I stand up in strong support of the bill and the amendment. Thank you, Mr. President.

[LB230]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

SENATOR GLOOR: Thank you, Senator Price. (Visitors introduced.) Senator Schumacher, you are recognized. [LB230]

SENATOR SCHUMACHER: Thank you, Mr. Chairman. Covering a couple points on this bill that maybe need just a little highlighting. The one, of course, is with regard to the strategic information contained in some of those records. Once they're released over the Internet, you can't get the cat back in the bag. So it's not like the old days where you had to trace a piece of paper around and it was hard to disseminate. Once this information is released, it's very hard to ever get it back again, and you can't change a design on some of these facilities once the information is released. The second part that I wanted to highlight a little bit is the consumer use information. The databases that are generated and will be generated in the future by use of the things they call smart meters which are able to transmit an individual customer's information with regard to usage at any particular point, for example, of water or of electricity, provide or could provide valuable cues to someone who has got evil intent as to when people come home from work and start to use electricity, when they go to work in the morning, when they take showers, and so you can chart out from that information patterns which may be useful in conducting such things as burglaries or patterns which may even be used for marketing purposes. And that is protected also by this legislation. So I would rise to encourage a vote for LB230 and AM365. Thank you. [LB230]

SENATOR GLOOR: Thank you, Senator Schumacher. Seeing no senators wishing to be recognized, Senator Avery, you're recognized to close on the committee amendments. [LB230]

SENATOR AVERY: Thank you, Mr. President. This committee amendment does exactly what we try to do here all the time, and that is to strike a critical balance between sound public policy in one area and proposed policy in another. What we are trying to do here is to protect critical infrastructure. These critical infrastructures are complex and

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

interdependent and they are a tightly integrated process in ensuring the security of these systems is essential because it would be easy with the kind of information that is now in the public record it would be easy for people who wish us harm to gain access to this information and use it to undermine critical infrastructure in our public utilities. It is also important that we protect our public records law. And to the extent that we can, we must always do that, and that is something that the Government Committee tries to do consistently. But we have to balance that against the larger public interest. And in this case public security, public safety, the security of our infrastructure and public utilities is so important that we believe this is a modest but necessary narrowing of the public records law, and I urge you to adopt it. Thank you. [LB230]

SENATOR GLOOR: Thank you, Senator Avery. Members, the question is, shall the committee amendments to LB230 be adopted? All those in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB230]

ASSISTANT CLERK: 40 ayes, 0 nays on the adoption of committee amendments, Mr. President. [LB230]

SENATOR GLOOR: The amendment is adopted. We continue on discussion, the advancement of LB230. Seeing no members in the speaking queue, Senator Sullivan, you are recognized to close. [LB230]

SENATOR SULLIVAN: Thank you, Mr. President. In closing, I'd first like to thank Senator Paul Schumacher for prioritizing LB230. I'd also like to thank NPPD and Media of Nebraska for being willing to compromise, as Senator Avery said, and working so diligently to find common ground for the good of our state and its citizens. Nebraska's public utilities provide Nebraskans with low rates, exceptional reliability, and open governance. LB230 is a clarification of Nebraska's public records act that protects our publicly owned and operated utilities while not infringing on the public's right to transparent government. I strongly encourage your support to move LB230 to Select

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

File. Thank you. [LB230]

SENATOR GLOOR: Thank you, Senator Sullivan. The question is the advancement of LB230 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB230]

CLERK: 42 ayes, 0 nays, Mr. President, on the advancement of LB230. [LB230]

SENATOR GLOOR: The bill advances. Continuing with General...announcements, Mr. Clerk. [LB230]

CLERK: Thank you, Mr. President. Enrollment and Review reports LB389A, LB524, and LB297 to Select File, some having Enrollment and Review amendments. Senator Coash would like to print an amendment to LB41. Senator Larson introduces LR121, and pursuant to that introduction, a communication from the Speaker directing it be referred to Reference. Mr. President, an announcement. Revenue will meet at 11:00 in Room 2022; Revenue at 11:00. That's all that I have. (Legislative Journal pages 868-873.) [LB389A LB524 LB297 LB41 LR121]

SENATOR GLOOR: Thank you, Mr. Clerk. We continue with General File, LB387. Mr. Clerk. [LB387]

CLERK: Engrossed LB387 is a bill by Senator Hadley. (Read title.) Introduced on January 13, referred to the Banking, Commerce, and Insurance Committee. The bill was reported to General File. I do have an amendment to the bill from Senator Hadley, Mr. President. (AM636, Legislative Journal page 830.) [LB387]

SENATOR GLOOR: Thank you, Mr. Clerk. Senator Hadley, you're recognized to open on LB387. [LB387]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

SENATOR HADLEY: Mr. President and members of the body, thank you. I appreciate presenting LB387 to you. I think it's a very important bill. It's part of the entire package that we're working with for economic development for the state of Nebraska. It is a part of the package to bring Nebraska into the twenty-first century and to position itself as we go forward to become a high-tech development state that brings jobs and economic development to the state of Nebraska. I want to thank the Entrepreneurship Committee under the Chair of Senator Conrad this summer. We talked about a lot of these issues and it's good to see them coming to fruition on the floor. I'd also like to thank Senator Burke Harr for prioritizing this bill so that we could hear it on the floor because I think it's a very important part of the package we're putting together for economic development. The purpose of LB387 is to encourage and support the transfer of technology and innovation to create high-growth, high-tech companies in the state. Nebraska has traditionally lagged in tech transfer and encouraging high-growth and high-tech companies in the state. Tech transfer is the process of converting scientific and technological advances into marketable goods or services. Is this important for states? Let me use an example in North Carolina. With the tools of biotechnology, North Carolina can grow more crops on less land, grow new and more nutritious crops and find new uses for existing crops. To make that vision a reality, the North Carolina Biotechnology Center is focusing on applying biotechnology to traditional agriculture. The center's funding programs will encourage new ideas that combine agriculture and biotechnology and tech transfer in research, education and company development. They're also expanding North Carolina's already solid foundation for ag biotech business leadership. In addition, many supporters, organizations, universities and research stations are sharpening their ag biotech focus. So it can work, it's worked in a lot of states. We need to get on the bandwagon. The bill has many different sections and I'd like to take a few minutes to go through those sections. It is a rather complicated bill and I think an understanding of each section is important. The Small Business Innovation Research or SBIR program is a United States government program coordinated by the Small Business Administration in which 2.9 percent of the total extra mineral research budgets of all federal agencies with extra mineral research budgets in



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

excess of \$100 million are reserved for contracts or grants to small businesses. In 2010, that represented over \$1 billion in research funds. Over half the awards are to firms with fewer than 25 people and a third to firms with fewer than 10. A fifth are minority or women-owned businesses, a quarter of the companies in FY '10 were first-time winners. The SBIR program agencies award monetary grants in phases one and two of a three-phased program. Phase one, the startup phase, makes awards of up to \$150,000 for approximately six-months' support for exploration of the technical merit or feasibility of an idea or technology. Phase two awards grants up to \$750,000 for as many as two years in order to facilitate expansion of phase one results. Research and development work is performed and then a developer evaluates the potential for commercialization. Phase two grants are awarded exclusively to phase one winners. Phase three is intended to be the time when innovation moves from the laboratory into the marketplace. No additional SBIR funds are awarded for phase three. The small business must find funding in the private sector or other non-SBIR funding. The initial funding in LB387 is for phase zero of the SBIR process. The SBIR phase zero grant program has been successful in other states. The Nebraska program is comparable to those in places and is likely to have similar outcomes. Increasing SBIR applications will likely yield more winning of applications. And increased SBIR awards is a mechanism for the region to get direct federal grants that helps spur innovation and new ideas into commercial opportunities, but also help the companies from diluting their equity positions too early. Many companies that need early money to approve a concept would benefit from SBIR, but we have a low application rate compared to many other states so increasing the number of applications is an important way for the deal pipeline to fill some downstream opportunities. Planning grants shall not exceed \$5,000 per year. Second, the bill would also increase...create an SBIR matching program that would provide an additional dollar amount of not more than 65 percent of the federal award or \$100,000, whichever is less, to companies that apply for and receive an SBIR phase one award. The total allocation for the phase zero and matching programs is \$1 million. The SBIR matching program has contributed to economic growth in states such as Kentucky, where they have leveraged more than \$60 million in federal dollars over the

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

last decade and some state ones to create tens of new research and development companies. These state dollars have more than doubled the allocation in Nebraska companies over the same period. Thus the SBIR program is a significant improvement and will place tens if not hundreds of companies into the innovation and job creating pipeline over the next decade. The two big limitations on the programs are that it is capped at a relatively low number and does not apply to phase two applications. Third, the bill would create a financial assistance program for small businesses, less than 500 employees, creating a prototype commercializing research from either a private enterprise in the state or a university. The Department of Economic Development, DED, would administer and would be able to match nonstate funds up to \$50,000 for prototype development. The total allocation for the program is \$1 million. This demonstration fund is an incredible step forward in concept. SBIR is a national program and creates national funding leverage. However, having a state-specific program is incredibly important because it ensures regular funding to high-growth startups in the state that are strategically important, thus having a local source of grants for high-tech companies is critically important. Fourth, the bill would create a commercialization fund for companies that already have a prototype or process. Again, funds must be matched by at least 50 percent of nonstate funds. The total cap on a single project is \$500,000 and the assistance may not exceed more than 50 percent of the total project cost. The commercialization fund has an annual cap of \$2 million. The funding of the commercialization of university and private sector technologies is very important. Equally important is for universities, companies and individuals to begin the process of breaking down the walls of innovation in the region. Many universities and companies would benefit from hearing and telling success stories and failures of their efforts. Fundamentally, this communication is probably more important than the funding. But the funding will likely act as the impetus for the universities and companies to increase the conversation and make it more transparent. The bill would authorize financial assistance for companies headquartered in Nebraska but use the faculty or facilities of a public or private college or university for applied research and development or that use intellectual property generally at a public or private college or university in

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

Nebraska. A business may apply for two grants over a four-year period and could get \$100,000 for phase one stage and \$400,000 for a phase two stage of this university collaborative project. The United States matches 100 percent of the total funds requested for both stages. The total cap for the program is \$3 million per year. Fifth, the bill would establish an innovation and value-added agriculture program. That part of the bill will be capped at \$1 million per year. Next the bill would reorganize the small...  
[LB387]

SENATOR GLOOR: One minute, Senator. [LB387]

SENATOR HADLEY: ...business investment...I'm sorry? [LB387]

SENATOR GLOOR: One minute. [LB387]

SENATOR HADLEY: Okay. Next, the bill would reorganize the Small Business Investment Program and how DED currently allocates money to microlending enterprises. Basically, the bill makes DED the central coordinated office for the facilitation of microlending and microenterprise development. I would appreciate your support of this bill and the amendment and the A bill which will be coming up afterwards. I think it's an important part of what we need to do to move forward in Nebraska in economic development. Thank you, Mr. President. [LB387]

SENATOR GLOOR: Thank you, Senator Hadley. (Visitors introduced.) As the Clerk stated, Senator Hadley submitted an amendment. Senator Hadley, you're recognized to open on your amendment. [LB387]

SENATOR HADLEY: Thank you, Mr. President, members of the body. This is as long as I've spoke in one time since I was in front of a class. The key elements of the amendments, there are eight of them, and I would like to just list them. One, the amendment adds the innovation and value-added agricultural program that I mentioned

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

earlier that is totally capped at \$1 million per year. It creates a funding floor of \$500,000 in the microenterprise development program while maintaining the \$1 million cap. It changes the loan to technical assistance ratio from 80 to 20...80 percent loans and 20 percent technical assistance to 70 percent loans, 30 percent technical assistance. It adds explicit language intended for microenterprise technical assistance providers, defines microenterprise businesses with ten or fewer employees, allows for microenterprise funds to be used as a loan-loss reserve in order to leverage federal loan funds, reconciles the definition of a distressed area with the language in LB386, strikes the general cash fund language, and creates a simple General Fund appropriation to DED. Thank you, Mr. President. [LB387 LB386]

SENATOR LANGEMEIER PRESIDING

SENATOR LANGEMEIER: Thank you, Senator Hadley. You have heard the opening on LB387 and AM636. The floor is now open for discussion. Those wishing to speak we have Senator Mello, Conrad, Sullivan, and Burke Harr. Senator Mello, you're recognized. [LB387]

SENATOR MELLO: Thank you, Mr. President, members of the Legislature. I rise in strong support of AM636 as well as the underlying bill, LB387. I'd like to thank Senator Hadley and Senator Conrad for their work in leading the LB1109 task force, over the interim, where a good number of the proposals that are laid out in LB387 also came to a similar conclusion through the LB1109 task force. Speaking to the underlying amendment, I know that he's not here this morning, but I'd like to specifically recognize and thank Senator Heidemann for his diligent work of working with myself and a few others who had concerns regarding some of the microenterprise components of the underlying piece of legislation. Senator Heidemann went out of his way to ensure that microenterprise, as well as value-added ag programs, were still going to be part of the underlying innovation-based programming. And without Senator Heidemann, I don't think we would have had AM636. So I'd like to just make sure to recognize that this is a

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

strong component of the bill of ensuring that startup businesses in high-poverty areas of the state and distressed areas of the state have access to that microloan, the microloan assistance and technical assistance that is so desperately needed, not just in areas of north and south Omaha but a good number of areas across the state to help us spur innovative job creation businesses. Without speaking too much on the underlying bill, I know Senator Conrad is behind me and I want to ensure that she is able to go into detail regarding a lot of the components of the bill that originated as well from our LB1109 task force. Two strong components of the underlying piece of legislation that are very critical in my mind is the commercialization aspect of the bill, which DED will serve as the linchpin of ensuring that we tie-in our business innovation with our university innovation. But also the new program that's created is the SBIR's zero phase program, it's a critical component to assist entrepreneurs who are applying for this federal program to help provide that initial seed capital and assistance they need to continue the commercialization of their products. Nebraska ranks very, very low in national rankings in regards to our SBIR programs. And I believe that we see, in LB387 we see what is needed--that acceleration of providing these entrepreneurs that seed capital to apply for the SBIR grants, as well as once they get them to help expand their potential ability to apply for more grants. So I think that it's a critical component, if we're going to have any kind of SBIR program in this state, that we have DED helping kind of corral the various interested partners and help steer and align existing resources behind what we know is the future of our economy, which is the innovation-based programs and innovation-based businesses that will lead us in the twenty-first century. So with that, I'd like to thank Senator Hadley, Senator Conrad for introducing the bill, Senator Burke Harr for prioritizing it and Senator Lavon Heidemann for working with myself and others to bring about AM636. Thank you, Mr. President. [LB387]

SENATOR LANGEMEIER: Thank you, Senator Mello. Senator Conrad, you're recognized. [LB387]

SENATOR CONRAD: Thank you, Mr. President. Good morning, colleagues. And I'll just

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

add my gratitude to the chorus that was started by Senator Mello. Senator Hadley worked tirelessly as Vice Chair of Nebraska's Innovation and Entrepreneurial Task Force which was created under LB1109 and was my priority bill last year. I'd again like to thank all the committee members who worked hard for really nine months in 2010 to conduct extensive research on these topics, surveying existing programs that help small businesses in Nebraska, looking at what other states have done to evolve and improve their small business and entrepreneurial public policies and economic development tools, and to really create a set of, I think it was, 17 specific policy recommendations that the task force put out in early December and many, many of those are reflected in legislation that you will see this year. And this is a critical component of that package. And what the research demonstrated, colleagues, and we talked about a little bit when we were discussing the angel investment legislation, is that Nebraska has a real opportunity for improvement and growth in this policy arena. We need to utilize the existing resources that we have and ensure that they are being put to their highest and best purpose. And part of that discussion needs to focus on where we make our investments and ensuring that the end result are good quality jobs that are going to help address brain drain issues, that are going to help Nebraska's entrepreneurs, small businesses and innovators stay in Nebraska and grow and thrive in an ever-changing global economy. I did want to point out just a few things in terms of the SBIR component which is a big piece of this legislation and which is reflected in recommendations 6 and 7 of the task force's report. And I think Senator Hadley and Senator Mello did a great job in laying out what this is. And it's important that we continue this statewide platform and dialogue bringing together a seamless partnership of private sector interests, higher education and state government in order to achieve a comprehensive solution to creating a culture and an ecosystem that supports Nebraska's small businesses and entrepreneurs. And in conducting our research in concert with folks who are on the front lines of these issues, both economic development professionals and business owners, the research indicated that approximately 60 percent of Nebraska entrepreneurs and small business owners were not familiar with the SBIR program. In addition to that, the findings showed that 78 percent of our economic development professionals in the state

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

were familiar with the program. So by having these conversations and changing our public policies to provide support and assistance with the SBIR program, we're really filling a key void here and a disconnect about the awareness of these fantastic opportunities that exist for our private sector partners to take advantage of on the federal level. By instituting this legislation, and again we'd be remiss and I know Senator Heidemann is not here at the moment, but he worked diligently to ensure that this policy is balanced as it moves forward, protecting interests that are important to rural Nebraska and microenterprise agencies and interest groups,... [LB387]

SENATOR LANGEMEIER: One minute. [LB387]

SENATOR CONRAD: ...and then also recognizing the need to move and reform in a new direction. So this has really been a team effort by people all across the political, philosophical spectrum and from really every geographical corner of Nebraska. The State Chamber, the Lincoln and Omaha Chambers, the Department of Economic Development, small businesses, higher ed particularly at the university, and Southeast Community College have really been our partners in this effort. This is an exciting step forward for Nebraska. And I urge your support for the amendment and the underlying legislation. Thank you, Senator Hadley, and thank you, members. [LB387]

SENATOR LANGEMEIER: Thank you, Senator Conrad. Senator Sullivan, you're recognized. [LB387]

SENATOR SULLIVAN: Thank you, Mr. President. I wonder if Senator Conrad would yield for some questions? [LB387]

SENATOR LANGEMEIER: Senator Conrad, would you yield? [LB387]

SENATOR CONRAD: Yes, absolutely. [LB387]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

SENATOR SULLIVAN: Thank you, Senator. I appreciate your comments that you just made. And as you might expect, I rise in concern and looking out for the impact of this legislation on rural Nebraska. Now as I understand it, with this legislation we would be doing away with the Microenterprise Development Act, the BECA funding, the ag value-added and the Main Street Program, is that right? [LB387]

SENATOR CONRAD: Well, I believe that if you look at the amendment that Senator Hadley has brought forward, and again it was part of the good work that Senator Heidemann and others who were concerned about those programs brought to the table. And really what it does is, I think, evolve those programs to make sure that they're working to the highest and best purpose that they can, but also recognizing that we really do need to see a paradigm shift here in terms of how we invest our limited resources. [LB387]

SENATOR SULLIVAN: Now as I understand it, a portion of these funds in these programs will be directed toward what's defined as economically distressed areas. Is there some assurance, I guess, that a portion will be directed to rural Nebraska, because there obviously are economic distressed areas all across the state? [LB387]

SENATOR CONRAD: Yes. And, Senator Sullivan, if you would look in Section 2 of AM636, and I'll read it into the record, there's a definition for distressed area. And "distressed area means a municipality, a county with a population of fewer than 100,000 inhabitants," which I think would cover most of the counties in your areas, "an unincorporated area within a county, or a census tract in Nebraska that...has an unemployment rate" exceeding "the statewide average" and "a per capita income below the statewide average" or "a population decrease between the two most recent federal decennial censuses," I'm sorry, pronunciation, between the last two censuses. [LB387]

SENATOR SULLIVAN: With that population threshold, as you said, it covers the vast majority and certainly all of the communities in District 41. But again then I'm wondering



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

if some of the very smallest of the small communities and rural areas might be left in the dust because it does include such a wide population area. There's really no assurance in this legislation, is there? [LB387]

SENATOR CONRAD: Well, I think, Senator Sullivan, what you have to keep in mind is it does provide some targeted resources to the areas that need them most--in distressed areas in our most populace communities and in rural Nebraska. But you still have to be able to meet the initial threshold of having the kind of business or activity to qualify in the first place. [LB387]

SENATOR SULLIVAN: I'm also interested in the component of planning because I think that probably speaks to maybe some entrepreneurs with very small businesses. So can you tell me a little bit more about how the planning component enters in. [LB387]

SENATOR CONRAD: The planning component for the business or for the state Department of Economic Development, because I just wasn't tracking? [LB387]

SENATOR SULLIVAN: For the business, for the business. [LB387]

SENATOR CONRAD: For the business. Well, I guess that in terms of planning you mean in...I'm just not really following the question. [LB387]

SENATOR SULLIVAN: Well, I guess, what I'm wondering is, will there be assistance, technical assistance for planning that oftentimes entrepreneurs in small and rural areas lack the assistance to do some of that? [LB387]

SENATOR CONRAD: Yes, there will be, Senator Sullivan. And if you look again at the amendment and you look there, there is an allowance for technical assistance, particularly in the area of microenterprise grants... [LB387]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

SENATOR LANGEMEIER: One minute. [LB387]

SENATOR CONRAD: ...and the private organizations that administer that. There's a specific provision to allow that and to cap at the amount of fees that can be expended on that operational support so that more dollars can get out to the business owners and the small business folks who need them. But it is recognized in the amendment and indeed protected. [LB387]

SENATOR SULLIVAN: Just from a philosophical stand...and maybe even a practical standpoint, how do you think that this legislation helps main street in rural Nebraska? [LB387]

SENATOR CONRAD: Well, I think that this legislation has the ability to help all small businesses in Nebraska by reformulating our existing programs targeted to these areas and making sure that they work in a way that is competitive in terms of what other states have done and that are going to have the results of high quality, high-paying jobs which is really critical to... [LB387]

SENATOR LANGEMEIER: Time. [LB387]

SENATOR CONRAD: ...the future success of Nebraska. [LB387]

SENATOR SULLIVAN: Thank you. [LB387]

SENATOR LANGEMEIER: Thank you, Senator Sullivan and Senator Conrad. Senator Burke Harr, you're recognized. [LB387]

SENATOR HARR: Thank you, Mr. President. And I want to thank Senator Hadley, Senator Heidemann and Senator Conrad for their hard work on this bill and for letting me swoop in at the last second and prioritize this bill. I appreciate all their hard work on

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

this bill. I think it's a fundamental change in how we recruit business in Nebraska from a, I'll call, a hunter mentality where we go outside the state and try to bring business in here, erase the bottom because we have to give things away to a gatherer, gardening system where we're really trying to grow internal businesses inside Nebraska and really starting with small businesses which are mostly found in, well, are found largely in small towns. So I do believe it has a good cause. And so I enter this with a bit of reluctance. But I do have a problem with AM636 and it's specifically Section 2, part (2) which addresses what was just previously spoken about which is the definition of a distressed area. Previously, there was a definition in there and it's a broad definition. It said it's a county that is...has a population decrease in the last ten years; if you have an unemployment level that is higher than the state average or income that is lower than the state average you qualify as a distressed area. That definition was changed. Under the original definition, only three counties weren't included and those were Lancaster, Washington and Sarpy. And in that situation, you had to look at census tract. This amendment changes that definition to over 100,000. So if Senator Hadley would yield to some questions, please. [LB387]

SENATOR LANGEMEIER: Senator Hadley, would you yield? [LB387]

SENATOR HADLEY: Yes, I'd be more than happy to. [LB387]

SENATOR HARR: Thank you, Senator. I guess my question is, what is the policy reason for the change in definition? [LB387]

SENATOR HADLEY: Senator Harr, I think after sitting on the Revenue Committee for the last three years, we spent a lot of time talking about LB775 and what that's done for economic development in the state. And a constant concern is that it has not helped outstate Nebraska, that it has not helped rural Nebraska. And so we made many changes in the last two or three years to try and do that. So to be very honest, this change was made to be assured that 40 percent of the funds would be basically going

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

to what I would call rural Nebraska, with 60 percent of the funds available to what I would call urban Nebraska. [LB387]

SENATOR HARR: Okay. And how did you come up with the \$100,000 figure? [LB387]

SENATOR HADLEY: To be honest, the three urban counties are Sarpy, Douglas and Lancaster, and they fit that definition. And I consider the rest of the counties basically being rural counties. [LB387]

SENATOR HARR: Okay. And what was...what new area is affected that wasn't affected before by this change in definition? [LB387]

SENATOR HADLEY: I believe that area does deal with parts of Douglas County. And I don't know whether it impacts Lancaster or Sarpy, Senator Harr. [LB387]

SENATOR HARR: Okay. Well, I can answer that one. It is Douglas County and Douglas County only. Do you know what senators would be affected by this change? [LB387]

SENATOR HADLEY: Yes, I think there were something like 14 senators that all have areas in there. [LB387]

SENATOR HARR: Yeah. And for the record, those are Senator Langemeier, Lathrop, Senator Pirsch, Senator Krist, Senator Nelson, Senator Howard, Senator Lautenbaugh, Senator Ashford, Senator Harr, Senator McCoy, and that's Harr, H-a-r-r, Senator Cook, Senator Pahls,... [LB387]

SENATOR LANGEMEIER: One minute. [LB387]

SENATOR HARR: ...Senator Price. And so I'm not sure about Council. Do you know what the fiscal note for this change in definition is? [LB387]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

SENATOR HADLEY: It did not change the fiscal note, Senator Harr. [LB387]

SENATOR HARR: Okay. Thank you. So what this bill does is it excludes all these 13 senators, including parts of my district and parts not and it then spreads that money to the rest of the state. We are depriving Douglas County once again. I turn around, I've passed out a map, one shows the population affected, which is 342,000. And then I've drawn another map that shows if we took that same population, starting at the Panhandle and worked our way east. I can't imagine this Legislature passing a bill that would deny that many citizens in that large of an area. They wouldn't do it. That would exclude specifically that area and that area only, and that's what this is doing and that's why I am against this amendment, for the bill, against the amendment with the change in definition. Thank you very much. [LB387]

SENATOR LANGEMEIER: Thank you Senator Harr. (Visitors introduced.) Continuing with discussion on AM636 we have those wishing to speak, we have Senator Utter, Price, Harms, Krist, Carlson, Hadley, and others. Senator Utter, you're recognized. [LB387]

SENATOR UTTER: Thank you, Mr. President. And good morning, colleagues. Certainly to me at this time and in the life of Nebraska the fiscal note has to be a concern. And then the net fiscal note, as I remember, is somewhere in excess of \$5 million per year. And I...and so I think we need to take that into consideration. But I do have a couple questions for Senator Hadley, if he will...if he would yield to questions. [LB387]

SENATOR LANGEMEIER: Senator Hadley, would you yield? [LB387]

SENATOR HADLEY: Yes, I would. [LB387]

SENATOR UTTER: Thank you, Senator Hadley. I notice there are reporting

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

requirements in Section 14 of the bill. And I think those are very good. The requirements go beyond just reporting how much money is spent but has some requirements with regard to the...to what we have accomplished with the money that we're spending and I think that's an important part of the bill. Another area that I think might also be important on this bill is that we consider some kind of a sunset date on it. I think all bills of this type and specifically bills that are starting new programs or consolidating programs and giving them new emphasis need some type of a sunset date so that the Legislature will in fact proactively take a look at what we've accomplished with this bill and what the importance will be of moving forward with...and the continuation of the program in the years to come. Senator Hadley, have you given any consideration to a sunset date on this bill? [LB387]

SENATOR HADLEY: Senator Utter, I have. And I would be certainly willing to work between General and Select on a potential sunset provision. Two points I'd like to make, you made one of them, is that technically it has a sunset because there's a report every year and the Legislature can discontinue funding on a yearly basis. Secondly, I think if we work on a sunset, we have to make sure that the sunset is long enough because these are long-term projects. And if we sit and talk about them in terms of one year or two years, we're just not going to have the results. So if we could have it a little further out, you know, in the ten year area or something like that, where we would have some real data to see if it's working or not. But I'd be happy to work with you between the General and Select and working on what might be best from a sunset standpoint. [LB387]

SENATOR UTTER: Well, even a five-year sunset would be better than a two-year sunset, would you agree? [LB387]

SENATOR HADLEY: I would agree. [LB387]

SENATOR UTTER: Thank you, Senator Hadley, and thank you, Mr. President.

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

Whatever time I have left I'd be happy to yield to Senator Hadley. [LB387]

SENATOR LANGEMEIER: Senator Hadley, 1 minute 50. [LB387]

SENATOR HADLEY: Thank you. I just quickly want to respond to Senator Harr's concern about Douglas County. You know, we have heard a lot on LB775 about outstate Nebraska. We're not trying to cutout. There's still 60 percent of the funds are available to anybody in the state. And if you look at LB775, a majority of the funds have gone to Lancaster, Sarpy and Douglas County. The last thing I would say, we have counties that are so poor right now that they're up against their mill levies, they need help. And if we can give them some help in economic develop to broaden their tax base that would be very needed. Douglas County is not one of those counties. [LB387]

SENATOR LANGEMEIER: One minute. [LB387]

SENATOR HADLEY: My last, if my memory is right, they're at about half of the mill levy for counties. We have counties that are at the 48- and 49-cent level. We need to give help to them to help them expand their tax base so that they can lower that mill levy. Thank you, Mr. President. [LB387]

SENATOR LANGEMEIER: Thank you, Senator Hadley and Senator Utter. Senator Price, you're recognized. [LB387]

SENATOR PRICE: Thank you, Mr. President, members of the body. I rise in support of the concept of the bill. I have some questions, as Senator Burke Harr had said, on the amendment. I haven't torn it apart completely, but I'll be listening intently and working with him to make sure I understand the impacts of that. I have numerous questions on this bill and I think I'll spend the time outlining them and then I'll engage in conversation with Senator Hadley. One of the things I have an issue with in the amendment, on page 3, line 27, where it talks about they're going to use up to 5 percent of the funds for

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

administrative purposes and that they could use...either the department can use that funding or a nonprofit. I think leaving it as a nonprofit seems a little loosey-goosey. Next thing in the amendment that talks to is that they changed that the company had to be headquartered in Nebraska to it is operating in Nebraska. Now under different federal guidelines, when you're talking about let's say a HUB zone, historically underutilized business zone, and you're using a census tract for that, you'll find that your headquarters needs to be there, I'm pretty sure. So I'll be interested in that. And then there's another part that talks about Section 11, this is interesting, ladies and gentlemen. They will have to spend at least \$500,000 a year. So you have a maximum that you can award, but there's a minimum to be awarded. And that's problematic because hopefully you have guidelines to say how you're going to award them; if companies don't meet that guideline, why are we awarding money? And I question here...would Senator Hadley yield now? [LB387]

SENATOR LANGEMEIER: Senator Hadley, would you yield? [LB387]

SENATOR HADLEY: Yes, I would. [LB387]

SENATOR PRICE: Thank you, Senator Hadley. I apologize for having my back to you but we'll just do this the way we're supposed to. [LB387]

SENATOR HADLEY: No problem. [LB387]

SENATOR PRICE: Senator Hadley, do you know if the qualifications for this program mirror the federal program for the SBIR? [LB387]

SENATOR HADLEY: I do not know that, Senator. [LB387]

SENATOR PRICE: Okay. Well, it would be interesting to find out where we (inaudible) with the federal. [LB387]



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

SENATOR HADLEY: I will find out. [LB387]

SENATOR PRICE: So I appreciate that. Can you talk to the amendment and why we're saying that it wouldn't have to be headquartered, it could be any business operating in Nebraska, we're talking microloans, we're talking about all these things that you said were the tax base, but yet it's a company that's large enough to operate in other states and Nebraska. [LB387]

SENATOR HADLEY: I think that we didn't want it to be so narrow that it was just strictly companies that operated in Nebraska. By allowing companies that operate in other places, hopefully, they could expand in Nebraska and use Nebraska employees for their expansion. [LB387]

SENATOR PRICE: Well, I applaud that, Senator Hadley. But I do think it's somewhat problematic to say on one side that we're defining a small group, a company of five employees or ten employees or less within the bill, and that could be a company that is headquartered in another country even, and they put one body here, they hang a shingle out and they'll get Nebraska tax dollars over perhaps a company that is strictly Nebraskan. So I would like to work with you more on that as you have offered to work with people. I'd also like to know about the...on Section 9, page 3, paragraph 3(b), we talk about revolving loans, that the money can be used for revolving loans. And the question is we don't see a period on that revolving loan, yet we have a two-year limitation on using the funds. Do you find that perhaps we could be in a quandary there? [LB387]

SENATOR HADLEY: We could certainly look at that part of the green bill and see. [LB387]

SENATOR PRICE: Great, I appreciate that. And then I would like again to talk about the

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

part where we talk about the department would have to spend at least \$500,000 a year. Can you talk to that. [LB387]

SENATOR HADLEY: I think the reason for that is to put a floor under it, because again we heard a lot on LB775 that it was going to large companies,... [LB387]

SENATOR LANGEMEIER: One minute. [LB387]

SENATOR HADLEY: ...that basically it was funding large businesses. And so we wanted to make sure that the Microenterprise Development Program, which is both for loans and for technical assistance, did hone in on those smaller companies, Senator Price. [LB387]

SENATOR PRICE: And I appreciate that, having worked with small businesses and large businesses here in Nebraska. But my question still comes, why are we mandating that they have to spend \$500,000 if there's no one who has actually met the requirements? We've put ourselves in a quandary there where we've said, no company can come forward, let's say we only had \$300,000 worth of microloans and capital requirements, to come in that were valid. Hopefully, we have requirements. Why would we tell them they have to spend \$200,000 more on something that hasn't met the requirement? [LB387]

SENATOR HADLEY: I would...I will certainly look into that because I think that might be a very valid point, Senator Price. [LB387]

SENATOR PRICE: Well, thank you very much, Senator Hadley. Thank you, Mr. President. [LB387]

SENATOR LANGEMEIER: Thank you, Senator Price and Senator Hadley. Senator Harms, you're recognized. [LB387]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

SENATOR HARMS: Thank you, Mr. President and colleagues. I rise in support of AM636 and the underlying bill, LB387. This is a really important bill and it's an important amendment to rural Nebraska. I disagree with Senator Harr in regard to his concerns, his issues about urban America, the people that are struggling is rural Nebraska. Rural Nebraska is the one that's really struggling and dying. And you know, colleagues, the fastest growing companies in America, the fastest growing business in America, which you heard me say on this floor before, are cottage industries, it's the entrepreneurs and that's what we have to develop. We cannot turn our back against rural Nebraska. That's the area that needs the help. Urban America is going to get along fine, whether they have access to these funds or not or they only get a certain percentage, they're going to do well. Look at what they are doing now. You take a look at the census report, look at the number of people that are moving from rural Nebraska. Colleagues, if we don't address this issue now, in the next decade, whoever is in this Legislature is going to have the problem not only with our public school system but just the declining number of people living there. This gives us the opportunity to address the issue. This gives us the opportunity to put dollars in companies and businesses that would like to be in rural Nebraska. Without it we have no hope, we have no chance, we have no opportunity. LB387 and this amendment, AM636, does some good things, colleagues. First, the amendment requires no additional dollars, no additional funding. Secondly, it adds the innovation and the value-added agriculture program which, by the way, was lost in the original shuffle. It caps it at \$1 million per year. It creates the funding for \$500,000 to the Microenterprise Development Program while maintaining a lid of \$1 million. That's important to us. Microenterprise can play a very valuable role for us but it's important to address the issue. It creates a loan-technical assistance ratio, it goes from 80-20 to 70-30, that's important to us. And what I'm saying to you, look at this for the real reasons, colleagues. Not everything, and I don't mean this in a derogatory statement, not everything can be in urban America; if we don't find some way to rejuvenate, whatever term you want to use, redesign, reengineer, redevelop rural Nebraska, we have serious problems. And I would urge you to support AM636, the amendment. I

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

would urge you to support LB387 because I think it's an opportunity for us to do what's right for this state, to balance it out for what's important for rural Nebraska. And I thank you, Mr. President and colleagues. [LB387]

SENATOR LANGEMEIER: Thank you, Senator Harms. Senator Krist, you are recognized. [LB387]

SENATOR KRIST: It's 11:15 and I'm pretty sure that this bill is going to take us through the rest of today and into tomorrow. And so I feel comfortable in saying that I don't think I've made my mind up nor am I close to having my mind made up. Whether or not I should sit back and allow District 10 to be singled out for a part of this state that cannot benefit for its equal share, and I will use that term conveniently, because the equal part of it I think it's been described that 40 percent of it needs to go to distressed areas which, in fact Senator Harr has pointed out, in terms of land mass does not come close in terms of population to those that will only get the percentage left. So 40 percent of it needs to go one direction, 60 percent needs to be spread out throughout the whole state, which leaves proportionately some of the folks in Douglas County, in particular my district, District 10. So I'm not going to make this about Douglas County, and I'm not going to make it about the city versus the rest, I'm not going to make it rural versus urban. We've been down this road before. I'm going to make it about District 10; if I go back to my district and tell them that I bought off on their percentage or piece of the pie in terms of development being less than anyone else's, I don't know if you've driven through District 10, but there are some very, very diverse areas within the district. I can't look at the bill and then look at the amendment and see where we were going and now see where we are going and rationalize how that affects my district. Now I know some of you are going to say, you know, Bob, I really think you ought to look at the state as a whole. Well, I've asked for some numbers. And I'll come back on this mike and I will tell you what the GDP is coming out of the metropolitan area, the city of Omaha, the city of Lincoln combined with the city of Omaha, and then potentially take a look at the agricultural part of our state, which I know is a huge part of our economy, but so is the

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

development equally throughout the city. Just because the population has come up in a district it doesn't mean a consensus in terms of where we should be. Its unemployment rate might not be where it is. Why is that part of the decision of whether or not it would be eligible for an equal portion or a proportion of economic development money that is out there? We're saying within this bill and this amendment here's the whole pie, and you people over here only get a certain percentage of the piece that you're allowed to have in developing this strategy. I'm not saying it's right, wrong or indifferent. I'm just having a problem dealing with it for my district, for District 10. And I think the other 13 or 14 districts that have been mentioned, those senators will also have that dilemma when they vote. So I wonder if we're in proportion or in our equal share or even our percentage of our proportion of our equal share, if we're doing what we need to do here. So I will sit and I will listen and I will not be aggravated by a decision made collectively by 49. But I'm just not sure that we're there yet. Thank you, Mr. President. [LB387]

SENATOR ADAMS PRESIDING

SENATOR ADAMS: Senator Krist, thank you. Senator Carlson. [LB387]

SENATOR CARLSON: Mr. President and members of the Legislature, we're having good discussion on this bill this morning. I'm going to comment on AM636 and I know that Senator Hadley is listening. And after I make some comments I'm going to ask to address him. On pages 2 and 3 of the amendment it brings out that purposes of this amendment in that section, Section 8, is to support agricultural communities, to enhance income opportunities for farming and ranching, to increase farming and ranching operations' share of the food system profit, to enhance the farm and ranch access to electronic commerce, to encourage the production and marketing of specialty crops, to allow agriculture and agriculture-associated businesses to be eligible for financing under this act. And then it indicates that the entity receiving assistance must provide a 25 percent match. And that all sounds pretty good to me. I would like to address a question to Senator Hadley, if he would yield. [LB387]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

SENATOR ADAMS: Senator Hadley, would you yield? [LB387]

SENATOR HADLEY: Yes, I would. [LB387]

SENATOR CARLSON: Senator Hadley, on page 3, in line 15, after this section that I just mentioned the various parts of it, it says that "the department shall not award more than \$1 million per year for financial assistance under this section." Now we have to be careful about words. "The department shall not award more than \$1 million per year for financial assistance under this section." Would you explain what that means. [LB387]

SENATOR HADLEY: Yes, Senator Carlson, thank you for bringing that up. Actually, if you look at the different programs, I believe they add up to about a potential \$9 million that could be available...spent under these different programs. And what we have done is that we have capped each of the programs and we've tried to allow flexibility to the Department of Economic Development. So if one year, for example, they did not have appropriate prototyping grants, they may not award any prototyping funds and award \$1 million in the agricultural area. Another year, they may not have the commercialization and support grants at the \$2 million level, so they back that off and put prototyping up to \$1 million a year. So it's to provide flexibility in these on a year-to-year basis within the Department of Economic Development. [LB387]

SENATOR CARLSON: Okay, so what it really means is that the amount that could be available for assistance under Section 8 is anywhere from 0 to \$1 million. [LB387]

SENATOR HADLEY: That's correct, Senator Carlson. [LB387]

SENATOR CARLSON: Okay. Just so that we understand that. Thank you, Senator Hadley. And I'll continue to listen to the discussion on AM636 and the underlying bill, LB387. Thank you, Mr. President. [LB387]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

SENATOR ADAMS: Thank you, Senator Carlson. Senator Hadley, you're in the queue.  
[LB387]

SENATOR HADLEY: I just wanted to again say that this is important. I think this is something that we need to look at. I appreciate the discussion. I'm trying not to make this an Omaha or urban-rural discussion, but it was brought up. And I can tell you from my experience in the Revenue Committee in dealing with problems with LB775 there is a concern in rural Nebraska and we've tried to address this; if you look at where the population loss is in Nebraska, where the concerns on income, where we want to have businesses, where young people can stay, it's in rural Nebraska. And I hope that this bill goes a long ways to try and address some of those problems. So that's why the 40 percent was put in there. And I want to reassure, there is still 60 percent available for any area in the state, any area in the state. So I hope again that you would pass AM636 and LB387. Thank you, Mr. President. [LB387]

SENATOR ADAMS: Thank you, Senator Hadley. Senator Harr, you're recognized.  
[LB387]

SENATOR HARR: Thank you, Mr. President. Again, I want to make clear I support LB387, I support AM636 minus that definition. The definitional change, which obviously wasn't heard at the public hearing, I'm sure some people might have said something at that point. But this isn't a rural-urban issue, this is an equality issue. This is about treating everybody the same, all counties. We have created a definition that de facto picks on one county and one county only. And that is not fair, that is bad public policy. And that's something we, as a Legislature, do not want to be behind. Look, we need rural support, there's no doubt about it and I'm for that. LB775 has been great to the cities, I don't doubt that. Do we need more support? That's the intent of this bill. But we have to do it in a fair and equitable manner. We have to do it in a way in which we don't pick on one county, because once we start playing that game, you don't know where it's

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

going to end. So I'm going to be introducing an amendment here pretty soon. And at that time I'll address this issue. But I just have a fundamental problem with introducing an amendment that picks on one county and one county only and affects 342,000 people. And with that, I would yield the rest of my time. Thank you. [LB387]

SENATOR ADAMS: Thank you, Senator Harr. Senator Brasch, you are recognized. [LB387]

SENATOR BRASCH: Thank you, Chairman, thank you, body. I rise in support of AM636 and LB387. And I want to encourage my colleague, Senator Harr, here. The word fair, I'm concerned about using that word fair in this. I don't know if any of you or many of you remember the farm crisis of the eighties here. I happen...that was before farm time, before farm life for me. I worked in the Revenue Department then. And I know how our state was losing a lot of money because the farms could not make ends meet during that time. Last summer, I made an appointment with Mike Calvert and sat down for almost three hours and asked him, so what's up with our crisis today? You know, I worked in the Revenue Department during the farm crisis and now I see the economy of the whole country is suffering. What's going on? Basically, during that time the farms could not help us with our economy. When the farms suffered banks were foreclosing, we were losing businesses, that's where LB775 at that time, the first economic development bill for Nebraska, the last state, I believe, to adopt an economic development plan, came into being. Our farms today are what is truly holding us up as a state in our economy. The farm market is helping our urban cities. And, you know, the economy is being more resilient than other states because agriculture is in such good shape. My concern is if the farms...we are losing population. And I believe Senator Ashford had brought it out at a committee meeting, is that in today's business world and ag world geography should not be a question because of technologies. The farms do need to bring more people back. We need to be able to have our main streets and our communities offer virtual offices. Last weekend, my husband and I had to go to Omaha to do some business. We thought we'd stop in a restaurant because we were hungry, it



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

was getting late, a 40-minute line. (Laugh) Go figure. We took our little car, turned it back, went back, got right into a hometown restaurant. There is a lot of business, I believe, in our urban areas. We do need help in our rural communities. Our main streets send dollars to Omaha, to Lincoln, to Douglas County, it's very important that we recognize that. I believe the opportunities already exist in the urban areas. We need to encourage businesses globally, nationally to bring more into Nebraska and not just within a 200-mile radius. We have a broad state. Thank you. [LB387]

SENATOR ADAMS: Thank you, Senator Brasch. Senators wishing to be heard are: Schilz, Conrad, Council, and Pahls. Senator Schilz. [LB387]

SENATOR SCHILZ: Thank you, Mr. President, members of the body. Well, I think that the conversation that we're having here is okay. I think that Senator Harr, when he talks about equality and fairness and what goes on, that's a fair question, we can ask that. When others bring up the necessity for rural Nebraska to continue and to stop the population decline that's going on and find some way to at least stem that tide, that's absolutely legitimate. How do we get there? What I think we all need to remember though is that we really, truly are all in this together; if you look at the demographics of where the population has come from to grow our urban areas, look closely because it's come from rural Nebraska. If we can't maintain people living, working, growing, expanding the population in rural Nebraska, will we be able to sustain what needs to happen in our rural areas? It's extremely important that we have growth. It's extremely important that we have economic development, both in the urban areas and in the rural areas. And I think that we need to understand that possibly what we've done in the past and what we've setup as solutions for these problems that we find ourselves in may not be working and may not be as efficient as possible in what we need to get done. So it's okay to look at things, retool things, roll out something else to see if that's going to work. I think as you look at these issues that we deal with on a daily basis in the economic development world, I think it's important that we understand that government can't be everything to all people and we shouldn't want it to be. We need to find ways to make

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

development work without having to ask the government at times. We need to find ways to make things work with our programs that don't discriminate against certain folks or against certain businesses or against certain processes. And then we need to understand that any time that you're dealing with this it is a bureaucracy. I know a lot of people don't like that word, but it's true. And you need to find ways to navigate throughout that bureaucracy. And that's why it's so important to relook at these programs, relook at how we spend money in this area, first, to make sure that we're getting what we're supposed to but, secondly, to make sure that the process doesn't bog everything down because, folks, quite honestly the state of Nebraska cannot afford to be bogged down right now. We have some huge opportunities that are staring us in the face if we're willing to step up and grab them and move forward. I see it every day when I talk to people and go around, there's a lot of really good businesspeople in the state of Nebraska with a lot of very good ideas that are waiting, that are looking, that are trying to find ways to find the necessary capital and the necessary infrastructure and the necessary human capital to make their dreams reality. Our job in this body is to do that without getting into their way. So as I look at this legislation, as I look at any piece of legislation as it goes to this I want it to be as simple as possible, I want it to be effective and I want a buy-in from everybody so that we can move forward and not have these sorts of issues. [LB387]

SENATOR GLOOR PRESIDING

SENATOR GLOOR: One minute. [LB387]

SENATOR SCHILZ: Thank you very much. [LB387]

SENATOR GLOOR: Thank you, Senator Schilz. Mr. Clerk. [LB387]

CLERK: Mr. President, Senator Burke Harr would move to amend Senator Hadley's amendment with AM804. (Legislative Journal page 873.) [LB387]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

SENATOR GLOOR: Senator Harr, you're recognized to open on your amendment to AM636. [LB387]

SENATOR HARR: Thank you, Mr. President. And thank you, Senator Schilz, for your words of wisdom about how we're all in this together and we want to keep this bill as simple as possible and we need buy-in from the whole state. I couldn't agree with those words anymore if I'd said them myself. And that's what this amendment does is, because right now, as was currently stated, we treat Douglas County and Douglas County only differently than we do the rest of the state. So what I've done is I've focused in like a laser at where the problem is, and that's in those areas, the census tract areas that are distressed. And so instead of going by the whole county, cities, municipalities, if you're Douglas County, but counties for the rest of the state, I've just made it by census tract area; if your business is in a census tract area that has one of the three criteria, which is--unemployment below the state average, and I'll repeat again, unemployment below the state average, excuse me, above the state average, income below the state average or if your population in a census tract area has decreased in the last ten years you qualify. Now we focused it in on like a laser. It's going to go to urban areas. I'm not going to lie to you. The earlier map I showed you has a blue area for Douglas County. That area is still going to get it. Rural Nebraska is still going to get it. But what we've done is we've focused it on the issues that have...the areas that have problems. There are a lot of counties that are doing just fine right now. The futures on corn is \$7 a bushel, they're doing just fine. But there are areas where we have great poverty and we need to address that issue. And we need to address the issues of poverty and that's what this amendment does. So with that, I would ask for your vote on AM804, which is an amendment to AM636 of LB387. Thank you very much, Mr. President. [LB387]

SENATOR GLOOR: Thank you, Senator Harr. We return to debate. Senator Conrad, you are recognized. [LB387]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

SENATOR CONRAD: Thank you, Mr. President. And again, good morning, colleagues. Number one, I think that it's a good thing that we spend some time talking about this important legislation and further defining what the terms mean, further talking about appropriate parameters to ensure accountability and transparency and benchmarks for these new ideas because, make no mistake, these are new ideas. This is a significant paradigm shift in terms of the economic development tools we have available in Nebraska targeted to small businesses, entrepreneurs and innovators. And is it a panacea? Is it the only thing that we could do? Well, no, it's a first step in the right direction in improving our climate in the entrepreneurial ecosystem, in building a culture that supports small businesses and innovators. And having a statewide platform and dialogue to inform our partners in the private sector and across the state about the opportunities in the SBIR program and some of the other concepts contained in the underlying legislation and all of this is important and has value. So I think it's good that we'll have an opportunity to talk about where we want to target funds or if we should put parameters in place for additional definition or refinement, and that's an important part of the process. But I do want to just make one careful point about tone is the wrong word, but just about focus in terms of this debate. Of course we come from individual districts, of course they have local concerns. But we are Nebraska state senators and we have shared economic interest in Nebraska's economic success. We have a shared state tax base and that's the underlying resources that are utilized in putting together the resources for these programs. It's important that we not get too parochial in our concerns and that we keep focused on how we can move Nebraska forward in an ever-changing global economy, and that's by evolving our economic development tools that are targeted to small businesses. We've seen an evolution of our economic development programs go from LB775 to LB312 to super Advantage Act and additional tweaks along the way. Well, this is that same kind of evolution and modernization that is desperately needed to help those who can't qualify for those larger economic development and incentive programs. So keep a focus on the concept. Keep a focus on the biggest...bigger pictures that are at play here. And please remember that when all Nebraskans and all Nebraska small businesses have an opportunity to succeed, that

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

benefits everyone. It benefits the local community and the state as a whole. And as Nebraska state senators we need to focus on the best interests of the state whenever possible. Thank you, Mr. President. [LB387]

SENATOR GLOOR: Thank you, Senator Conrad. Chair recognizes Senator Council. [LB387]

SENATOR COUNCIL: Yes, thank you, Mr. President. And I have listened intently and during the debate have been reading the various amendments. Had some conversations off the mike with some of the senators who have been involved in the innovation study and brief comments with the Department of Economic Development. I concur with my colleague Senator Conrad's statement that our objective here ought to be improving economic opportunities for all Nebraskans. And I've had a concern about the impact of LB387 on microenterprise development in the state. And I have that concern from both a parochial perspective, my district and the residents of my district having to rely, I guess, disproportionately on microenterprise types of business development opportunities and not being restricted in their ability to access funds to assist them in those microenterprise opportunities. And I don't know if Senator Conrad is available to yield to a couple of questions in that regard, and if not,... [LB387]

SENATOR GLOOR: Senator Conrad, would you yield to questions? [LB387]

SENATOR CONRAD: Yes. [LB387]

SENATOR COUNCIL: Yes, and thank you, Senator Conrad. And you and I have had some discussions off the mike about LB387 and the concern that I have about microenterprise development and access to the appropriate level of financial assistance for microenterprise development. And I think one of the concerns is that when people see that LB387 calls for the repeal of the Microenterprise Development Act that that is an indication of a movement away from providing financial assistance for

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

microenterprise development. And could you respond to that concern. Does LB387 in fact move the state away from providing financial assistance for microenterprise development? [LB387]

SENATOR CONRAD: Yes, Senator Council. And thank you for the question. I think if you look at LB387 as introduced and you look at the substantive amendment that Senator Hadley has brought forth, AM636, you'll see some key differences. And one of the most significant differences in terms of what the amendment proposes in comparison to the underlying legislation is a recognition that there is value in the microenterprise program. And that in order to help that program move forward it codifies limitations and parameters that the microenterprise folks already are doing in practice. And it ensures that, rather than doing away with that program, we can tighten it up and make sure that it works to its best and highest purpose, and part of that means getting the funds that we appropriate out to the small business folks who need them rather than having them get sucked up by administrative or operational kinds of costs in the various entities along the way. So I actually believe that if people have strong feelings about the value of microenterprise, they should support the amendment, AM636, because it helps that program move forward in a stronger position. [LB387]

SENATOR COUNCIL: Okay. Now another question. As I understand currently, approximately less than a half million dollars has been appropriated to microenterprises, actually going out for microenterprise development... [LB387]

SENATOR GLOOR: One minute. [LB387]

SENATOR COUNCIL: ...under the existing structure. And that under LB387, with the proposed AM636, up to \$1 million would be made available for microenterprise development. Is that correct, Senator Conrad? [LB387]

SENATOR CONRAD: Yeah, I think it does change some of the levels of appropriation.

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

And you might also want to remember, in terms of the context historically related to this program, at the beginning of my first term, when times were a little bit better economically, we also had the opportunity then to make a significant additional investment over what was typically afforded to this program. So I think the limitations keep in line with and are responsive to the current economic conditions and allow the program to move forward. And, hopefully, as the economy continues to improve, maybe one day down the road we can look at expansion. [LB387]

SENATOR GLOOR: Time, Senators. [LB387]

SENATOR COUNCIL: Thank you. [LB387]

SENATOR GLOOR: Thank you, Senator Conrad and Council. (Visitors introduced.) Continuing with the discussion, Senator Pahls, you are recognized. [LB387]

SENATOR PAHLS: Thank you, Mr. President, members of the body. Senator Conrad's comment about this saving administrative funds, I will talk to that later on in the bill. But currently, what I'd like to...just a little bit of a clarification because it does seem to be that there is an urban-rural contention here, I might say. Please keep in mind, there are at least four of us who spent a good many years in the rural areas, because we were born and raised there. And I know some of the senators have owned farm or ranch land outside the metropolitan areas. So just because we live in the urban areas does not necessarily mean that some of our heart and soul is still not left out in the country where we grew up. I'm hearing about how this is going to help economic development in the rural areas. And, Senator Hadley, I'd like to, if you don't mind, would like to ask you a question or two. [LB387]

SENATOR GLOOR: Senator Hadley, would you yield to a question? [LB387]

SENATOR HADLEY: I certainly would from the distinguished Senator from the eastern

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

part of the state. [LB387]

SENATOR PAHLS: (Laugh) Thank you. I was afraid of the other adjectives that may come along with that. And this is the reason why today we are using some of our civil education, civics in the past, we are being civil about this. This is, of course, not to try to trap anybody. But as I look at the map, as we go along the state of Nebraska a lot of the growth happens to be urban areas or along Interstate 80. Now what I'm asking you to do, move yourself mentally off of Interstate 80. And if you can't answer this that would be understandable. But what are some of those economic opportunities that we are going to be able to provide with this legislation for those other counties, other than like the Kearneys, Lexingtons, because I think they have some different abilities in some of these other counties. What are some of the programs that we would provide? [LB387]

SENATOR HADLEY: Senator Pahls, that's a great question. And we're dealing with the answer to that a little bit in Transportation and Telecommunications because we're talking about broadband and Internet access across the state. And I think what we hope to do is that we can have a company in Valentine of ten people that, with access to the Internet, they could be doing business with people in Omaha, Lincoln. They can be developing products so that the boundaries are shrinking because of our technology. So I think if we get away from that...the fishhook theory, the fishhook theory meaning if you go from Fremont around to Omaha and then out Interstate 80 that's where all the commerce and that's where all the people are. I think there are people that want to be in the smaller towns. And with the new broadband and Internet access I think we have a chance by giving them access to a program that allows them to have businesses in those small towns. [LB387]

SENATOR PAHLS: Okay. And that's what I'm searching for. We do need to find those businesses that will be able to set up in the small towns. Although I've been told, in fact I was having breakfast Sunday or Saturday with a group of individuals, and they said they're having a hard time even filling some of the jobs in Lexington, Nebraska. I



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

understand this needs to be forward-thinking, but I just see some question about, even if we do provide jobs, you're telling me that you think people would...I would move back to the small towns is what you're saying or what you're hoping for? [LB387]

SENATOR GLOOR: One minute, Senators. [LB387]

SENATOR PAHLS: Senator, that is what you're hoping for? [LB387]

SENATOR HADLEY: That is correct. And I think again it's anecdotal, but we're seeing that in some of the smaller towns with people who have jobs that can be done through technology that do want to come back; if we don't do this, we'll never know that...if it works or not; if we do it, in five years, if we have to put a sunset on it, we'll know; if it doesn't work, we'll redirect the funds to other areas. [LB387]

SENATOR PAHLS: Okay. And I know my time is running out. And I must say, when Senator Utter mentioned, when he uttered the concept of a sunset he did catch my attention. Thank you. Thank you, Senator. [LB387]

SENATOR GLOOR: Thank you, Senator Pahls and Senator Hadley. Senator Hadley, you are now recognized. [LB387]

SENATOR HADLEY: Mr. President, members of the body, I stand in opposition to AM804 to AM636. My esteemed colleague, Senator Harr, I think is bringing this with good intentions. But we are state senators and it's a slippery road if we start going down the idea of what does it do for my area. I know we think about that and I know we have to answer to people at home, but let's think about some of the things in here that disparately impact the state. I mentioned LB775, if you want to look at how LB775, the funds have been spent, take a look. There's an annual report that's put out, we looked at it from a sunseting standpoint a couple of years ago in Revenue. It does impact the state disparately. Senator Adams is going to be bringing a bill soon that deals with

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

TEEOSA. Do you really want to go down that path of seeing how TEEOSA impacts all of the state? We're in it for a formula that does the best for the most people in this state, not a formula that gets every part of the state exactly what they want. Road building, go out to different parts of the state and ask them if they think that we have been fair in the way road building in the state has been handled. The Panhandle Express, I don't know what the one in Norfolk, I forget all the terminology but there is one up there, Senator Flood's attention I got. But there are people around that think we have not handled that fairly. But we try to do what is best for the state. The problems, generally speaking, for distressed areas are in rural Nebraska. That is why 40 percent is being targeted for rural Nebraska. That still leaves 60 percent for Sarpy, Douglas and Lancaster to fight over. We're trying to help the entire state. We need the entire state to succeed if we're going to succeed in having an economic development plan that brings...starts companies here, makes them successful, keeps our students here. One of the things we learned this summer is that so many students want to stay here but they don't feel the opportunities are here. So again, I urge you to vote red on AM804. Thank you. [LB387]

SENATOR GLOOR: Thank you, Senator Hadley. Chair recognizes Senator Price. [LB387]

SENATOR PRICE: Thank you, Mr. President, members of the body. A little more discussion here. And working on...and for the membership's understanding, the SBIR program also has a sister program called the STTR, that would be a small business technology transfer opportunity which mirrors the SBIR. And there are phases one and two, and I have actually written those and won those. I would like to ask if Senator Mello has a moment to discuss this on the mike? [LB387]

SENATOR GLOOR: Senator Mello, would you yield? [LB387]

SENATOR MELLO: Absolutely. [LB387]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

SENATOR PRICE: Thank you, Senator Mello. Just for the point of clarification, so we understand, when we're dealing with an SBIR and what we're trying to do here in this program, we're trying to make the environment more productive for...well, any business to win Nebraska tax dollars, because we are actually going to allow it to be any company outside, even if they don't have Nebraska employees. Do you know how many companies have actually won a phase one SBIR or phase two SBIR award here in Nebraska? [LB387]

SENATOR MELLO: Not at this point. I know, I believe it's in our entrepreneurship task force report that I'm getting some assistance right now on. [LB387]

SENATOR PRICE: Great. And I'm not trying to set a trap here. This is about getting information out. Thank you very much, Senator Mello. Ladies and gentlemen, what happens with the SBIR program, and I was talking with folks about this outside to make sure I'm understanding what we are trying to do here, they want to match the SBIR funds. So that means first the company has to win an SBIR award, you have to get one. To get an SBIR award, there are a lot of different federal agencies. You can get one from the USDA, you can get one from OSD, DARPA, you can get them from a lot of different government agencies. And what happens with an SBIR first and foremost is that there are a list of topics that are put out by these different agencies and then small businesses go out and they apply, they write a proposal to say how we would plan to bring about whatever this SBIR topic has to deal with. So what if these SBIRs have nothing to do with the industries we have here in Nebraska? I think that when we look at the low turnout or the low number of awards in Nebraska it's because there's a vast array of topics and very few companies have responded. I know there's a company here in Lincoln, J.A., I believe J.A. Woollam, they do precise measurement devices. There's another company up there in Omaha, 21st CSI, they won a few of these SBIRs and STTRs and a couple other companies. But I think you could count on your hands, and even with my half a thumb, we could count the number of individual companies in Nebraska that have actually won in the last few years an SBIR. So in talking with

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

people, what they want to do is maybe get proposal writers in to help in writing these things. So again, my question really comes down to this. Another thing for people to realize, part of qualifying to win an SBIR is that you have to have a defense contracting agency approved accounting system, thank you, Senator. We just got the answer--nine, so I was correct, you can count them on my digits, even including my thumb. So the issue being there is you have to have a defense finance accounting system or defense contract audit agency approved accounting system. So I hope that when we're talking about these things and the SBIR that part of what we're going to do is help these people get proper, whether it's Deltec or another, you could probably use QuickBooks, if you're a small enough business. So...and there also is a requirement to make sure...and would Senator Hadley yield to a question, please. [LB387]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: Senator Hadley, will you yield to a question from Senator Price? [LB387]

SENATOR HADLEY: Yes, I would. [LB387]

SENATOR PRICE: Thank you, Senator Hadley. You're always so generous to respond. Do you know that these awards would only be given to for-profit companies? [LB387]

SENATOR HADLEY: I do not know the answer to that. [LB387]

SENATOR PRICE: Well, I appreciate that. And again not as a trap, but to be awarded an SBIR you have to be a for-profit company and there are partnership requirements. So I hope that as we go forward... [LB387]

SPEAKER FLOOD: One minute. [LB387]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

SENATOR PRICE: ...thank you, Mr. President. I hope that, as we go farther in this discussion, we do cover how this system is going to help the companies in question when...I think we have a mike on, but how we're going to win more contracts first, before we can get to matching funds. Thank you, Mr. Speaker. [LB387]

SPEAKER FLOOD: Thank you, Senator Price. Senator Wightman, you are recognized. [LB387]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. I do rise in opposition to AM804 and in favor and will support AM636. Senator Pahls asked some questions about what area is outstate, and I can't give him the name of businesses. But some of the areas that I know are badly in need of help would be the communities of Columbus, Alliance, I was going to start at the west end, Alliance, Scottsbluff, Chadron, that aren't even in the fishhook, McCook, and then all of those that are in the fishhook as well which would be included under this which would include North Platte, Lexington, Kearney, Grand Island. Another one outside the fishhook probably is Hastings. So there are a number of communities that I think are needing help to maintain where they are at the present time. We're seeing a great population loss in Congressional District 3. And in a lot of the state, besides Congressional District 3, we are seeing population losses, I think, even in Norfolk. But we have a lot of population loss, many businesses that I can tell you will seek help under LB387. I think it is a major part of our economic development block to provide loans to these small companies. And so I think you will find that there will be many, many areas in outstate Nebraska that would use that. And we're not talking about, as I understand it, the entire amount that's being awarded or would be awarded under LB387. We're not restricting all of that to the distressed areas, but we are talking about 40 percent, which is probably just about exactly the population ratio of that area to the rest of the state. I know the three major counties at this point, by major from the standpoint of population, have about 52 or 53 percent of the population of the state of Nebraska. So the area that we're talking about that would be outside of the counties that have 100,000 or more population must total around 56 or 57 percent of

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 15, 2011

---

the total population of the state of Nebraska. And I can tell you they are in need of help, they're in need of help with regard to roads, as has been suggested earlier. But they're in need of help as far as developing businesses. In further response to Senator Pahls's questions that he asked, one of the areas that we would see outstate would be an area very close to Lexington, Nebraska--the Johnson Lake area. A lot of people retire in that area. They can and some of them do start small businesses. They operate their businesses elsewhere--from their homes often in that area around Johnson Lake, Nebraska. So again, I would urge your opposition to AM804 and support of AM636 and LB387. Thank you, Mr. President. [LB387]

SPEAKER FLOOD: Thank you, Senator Wightman. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR101, LR103, and LR104. Mr. Clerk, items for the record. [LB387 LR101 LR103 LR104]

CLERK: Mr. President, Urban Affairs Committee, chaired by Senator McGill, reports LB54 to General File. LB473, that was referred to Agriculture, reports that bill back to General File with committee amendments attached. I have a Reference report referring LR121. Senator Ashford offers LR122, that will be laid over. Senator Cornett, LR123; pursuant to its introduction, a communication from the Speaker directing that LR123 be referred to Reference for purposes of scheduling a public hearing. Senator Hadley, an amendment to LB329 to be printed; Senator Janssen, LB95; Senator Utter to LB387. Name adds, Mr. President, Senator Mello to LB329, Senator Pirsch to LB100, Senator Langemeier to LB315. (Legislative Journal pages 874-880.) [LB54 LB473 LR122 LR123 LB329 LB95 LB387 LB100 LB315]

Priority motion, Senator Lathrop would move to adjourn the body until Wednesday morning, March 16, at 9:00 a.m.

SPEAKER FLOOD: Members, you have heard the motion. All those in favor say aye. Those opposed say nay. We are adjourned. (Gavel)